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EDITOR'S NOTE

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No. 84-1644-CFX
Status: GRANTED

Title: Golden State Transit Corporation, Petitioner
v.
City of Los Angeles

Docketed:
April 19, 1985

Court: United States Court of Appeals
for the Ninth Circuit

Counsel for petitioner: Fasman, Zachary D.

Counsel for respondent: Haggerty, John Francis

Entry	Date	Note	Proceedings and Orders
1	Apr 19 1985	G	Petition for writ of certiorari filed.
2	May 21 1985		DISTRIBUTED. June 6, 1985
3	May 22 1985	X	Brief of respondent Los Angeles in opposition filed.
4	May 30 1985	X	Reply brief of petitioner Golden State Transit Corp. filed.
6	Jun 7 1985		REDISTRIBUTED. June 13, 1985
7	Jun 17 1985		Petition GRANTED.
9	Jul 23 1985		Order extending time to file brief of petitioner on the merits until August 15, 1985.
10	Aug 14 1985		Brief of petitioner Golden State Transit Corp. filed.
11	Aug 14 1985		Joint appendix filed.
12	Aug 15 1985		Brief amicus curiae of Chamber of Commerce of the US filed.
13	Aug 15 1985		Brief amicus curiae of NLRF filed.
14	Aug 29 1985	D	Motion of National League of Cities, et al. for leave to participate in oral argument as amici curiae and for divided argument filed.
15	Aug 30 1985		Record filed.
17	Sep 9 1985		Order extending time to file brief of respondent on the merits until September 30, 1985.
19	Sep 6 1985		Opposition of petitioner to motion of National League of Cities, et al. for leave to filed.
20	Sep 30 1985		Brief amicus curiae of Natl.League of Cities, et al. filed.
21	Sep 30 1985		Brief amicus curiae of National Irstitute of Municipal Law Officers filed.
22	Sep 30 1985		Brief amicus curiae of AFL-CIO filed.
23	Oct 7 1985		Motion of National League of Cities, et al. for leave to DENIED.
24	Oct 2 1985		Brief of respondent Los Angeles filed.
25	Oct 17 1985		CIRCULATED.
26	Oct 22 1985		SET FOR ARGUMENT, Wednesday, December 4, 1985. (3rd case).
27	Nov 25 1985	X	Reply brief of petitioner Golden State Transit Corp. filed.
28	Dec 4 1985		ARGUED.

PETITION FOR WRIT OF CERTIORARI

84-1644

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

GOLDEN STATE TRANSIT CORPORATION,
Petitioner,

v.

CITY OF LOS ANGELES,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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QUESTION PRESENTED FOR REVIEW

May a municipality, consistent with the policies and principles of federal labor law, insist that an employer settle a peaceful labor dispute as a condition of its right to continue doing business?

PARTIES TO THE PROCEEDINGS BELOW

All parties to the proceedings below subject to this petition for writ of certiorari are set forth in the caption of the petition.

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CONSTITUTION

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

No.

GOLDEN STATE TRANSIT CORPORATION,
Petitioner,

v.

CITY OF LOS ANGELES,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Petitioner Golden State Transit Corporation repectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit dated February 26, 1985.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit, dated February 26, 1985, is reported at 754 F.2d 830 (9th Cir. 1985), and is set forth at Appendix 1a-10a. The opinion of the district court is unreported, and is set forth at Appendix 11a-17a. A previous opinion of the Court of Appeals addressing the preemption issue raised by this petition, and setting forth facts pertinent to this petition, was reported at 686 F.2d 758 (9th Cir. 1982), *cert. denied*, 459 U.S. 1105 (1983), and

is set forth at Appendix 18a-25a. The district court's first opinion on the preemption issue, also containing pertinent factual background, is reported at 520 F. Supp. 191 (C.D. Cal. 1981), and is set forth at Appendix 26a-32a.[1]

JURISDICTIONAL STATEMENT

The judgment of the Court of Appeals was entered on February 28, 1984. The jurisdiction of this Court rests on 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The constitutional and statutory provisions involved, set forth at Appendix 33a, are:

Supremacy Clause, United States Constitution, Article VI, clause 2.

National Labor Relations Act § 8(d), as amended, 29 U.S.C. § 158(d).

STATEMENT OF THE CASE

Background and Facts

This case involves the authority of the City of Los Angeles to intervene in a labor dispute by conditioning a taxicab company's right to do business on that company's capitulation to the demands of its employees.

Prior to 1980, petitioner Golden State Transit Corporation ("Golden State") was the largest taxicab operator in the City of Los Angeles. On March 31, 1980, Golden State applied for a renewal of its franchise. Twelve other franchise holders also applied for renewals on or about that date. The date for expiration of all thirteen franchises was extended to March 31, 1981, and

[1] An opinion by the Court of Appeals addressing a different question presented by this case is reported at 726 F.2d 1430 (9th Cir. 1984), *cert. denied*, No. 84-378, 53 U.S.L.W. 3697 (Apr. 2, 1985).

pursuant to normal procedures, the renewal applications were referred to the City's Department of Transportation, Board of Transportation Commissioners, and the Transportation and Traffic Committee of the City Council. Those three bodies each concluded, *inter alia*, that Golden State was in full compliance with the terms and conditions of its franchise, and each recommended that Golden State be granted a long term franchise renewal. An ordinance approving Golden State's franchise renewal was placed on the City Council calendar for February 11, 1981, along with ordinances approving renewals of the other taxicab franchises.

In October, 1980, Golden State's collective bargaining agreement with the International Brotherhood of Teamsters Local 572 ("Teamsters") expired. Despite lengthy negotiations, the parties were unable to reach agreement. The Teamsters notified the Mayor and the City Council of the labor dispute on February 5, 1981, noting that Golden State's franchise renewal was to be considered at a City Council meeting on February 11. On February 11, 1981, Golden State drivers went out on strike.

At the February 11, 1981, City Council meeting, the Teamsters reviewed the details of bargaining with the Council, and asked that Golden State's franchise not be renewed because of the labor dispute. All pending franchises, except Golden State's, were renewed; Golden State's request for renewal was deferred until February 17, 1981. On February 17, at the urging of Teamsters representatives who appeared at the meeting, the City Council again refused a long-term franchise renewal and granted instead a franchise extension until April 30, 1981. Even that 30-day extension was made contingent on the Council expressly finding, on or before March 27, 1981, that the extension was in the best interests of the city. No other franchise was subjected to any comparable requirement or condition. 520 F. Supp. at 193, App. 28a.

On March 23, 1981, the City Council considered whether it was in the best interests of the city to extend Golden State's franchise until April 30, 1981.[2] At that meeting, Teamsters and AFL-CIO representatives accused Golden State of bargaining in bad faith,[3] claimed that Golden State's "intransigent" refusal to accede to the Teamsters' "modest" demands was the cause of the strike, urged that Golden State's franchise not be renewed, and expressed the hope that the Teamsters would be able to achieve a "decent living with decent benefits" with Golden State's successor. Members of the City Council advised Golden State that they would be willing to renew the franchise if Golden State signed a new collective bargaining agreement with the Teamsters, and several members stated that they voted against renewal because they disapproved of Golden State's stance in bargaining and its refusal to accede to the Teamsters' demands.[4]

The City Council voted not to extend the franchise. It is "undisputed that the sole basis for refusing to extend plaintiff's franchise was its labor dispute with its Team-

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[2] While the issue was pending before the City Council, Teamsters representatives sought to use the franchise issue in negotiations with Golden State. The uncontroverted affidavits in the record establish that Teamsters representatives threatened that "if [Golden State] doesn't settle [its] labor dispute, [it is] going to have a lot of trouble renewing [its] franchise" and specifically threatened Golden State that, "we are going to see that the City revokes or does not renew your franchise if you do not meet our demands."

[3] No charges of bad faith bargaining were ever filed before the National Labor Relations Board.

[4] Golden State's competitors also urged denial of the franchise renewal, asserting that Golden State's strike had not affected taxicab service in Los Angeles. That assertion was corroborated by the General Manager of the City's Department of Transportation, who noted that the strike had not caused any increase in customer complaints or service problems.

ster drivers," 520 F. Supp. at 193, App. 29a; *see id.* at 193-94, App. 30a, and that the City Council "insisted upon resolution of the dispute as a condition to franchise renewal." 754 F.2d at 833, App. 8a.

Thereupon, Golden State filed this action in the United States District Court for the Central District of California seeking damages and equitable relief.[5] Golden State alleged that the City's actions against Golden State were preempted by the National Labor Relations Act.[6]

Proceedings Below

The district court granted Golden State's request for a preliminary injunction. *Golden State Transit Corp. v. City of Los Angeles*, 520 F. Supp. 191, 195 (1981), App. 32a. In its ruling, the district court held that

> [b]y threatening to allow [Golden State's] franchise to terminate unless it entered into a collective bargaining agreement with the Teamsters, the City Council effectively denied [Golden State] of its most basic weapon, the economic strength of an ongoing franchise. Since Congress has sanctioned the self-help measures taken by [Golden State] here in resisting the signing of a new contract with the Union, the City Council is precluded by the Supremacy Clause

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[5] Despite the reversal of the grant of a preliminary injunction, the City refrained from issuing a cease and desist order during the pendency of this suit, and Golden State continued to operate. The City issued a cease and desist order in 1983, prohibiting Golden State from operating its taxicabs. Golden State was forced to cease doing business in Los Angeles and consequently was driven into bankruptcy.

[6] The Complaint also alleged due process and equal protection violations. The due process violations were alleged to arise from the manner in which the City Council made its determination; the equal protection violation was alleged to arise from Golden State's being singled out for non-renewal. Golden State does not seek certiorari on these issues.

from taking legislative action which would frustrate the purposes of the N.L.R.A.

520 F. Supp. at 194, App. 32a.

The Court of Appeals reversed, rejecting the district court's legal analysis.[7] *Golden State Transit Corp. v. City of Los Angeles*, 686 F.2d 758, 760-61 (9th Cir. 1982), *cert. denied*, 459 U.S. 1105 (1983), App. 20a-21a. The Ninth Circuit recognized that preemption was appropriate in cases involving the "free play of economic forces," *Lodge 76, International Association of Machinists & Aerospace Workers v. Wisconsin Employment Relations Commission*, 427 U.S. 132, 140 (1976), and held that the City's conduct altered the balance of power in this collective bargaining dispute in favor of the Teamsters. 686 F. 2d at 759, App. 20a. Nevertheless, the court held that under *Allen-Bradley Local No. 1111 v. Wisconsin Employment Relations Board*, 315 U.S. 740, 749 (1942), the use of streets and highways is a matter of "local concern" and that local regulation of labor relations involving streets and highways was therefore not preempted. 686 F.2d at 760, App. 21a.

On remand, the district court concluded that the Court of Appeals' legal analysis was the "law of the case" and granted the City's motion for summary judgment, adopting without revision the proposed order and findings of fact submitted by the City. App. 11a-17a. Golden State again appealed.

On this appeal, the Court of Appeals expressly disavowed its earlier reliance on *Allen-Bradley* to support a broad local interest exception for "streets and highways," concluding that its reliance on that case had been "misplaced." 754 F.2d at 832, App. 5a. The Court of Appeals acknowledged that this Court's decisions limited the "local interest" exception to certain core local concerns,

[7] The district court's findings of fact on the preliminary injunction have not been disturbed at any time during this proceeding.

such as control over violent, destructive or tortious activity, none of which were applicable to this case.[8]

Nevertheless, the Court of Appeals affirmed. Although the court again acknowledged that the City's conduct altered the balance of economic power in the labor dispute, 754 F.2d at 832, n. 1, App. 4a, the court extracted language from *Lodge 76*, 427 U.S. at 137 (1976), to conclude that there existed a second, distinct "peripheral concern" exception to federal preemption, and that the City's actions fell within the scope of that exception.

Under the Court of Appeals' analysis, preemption is appropriate only where a state enforces statutes or rules of decision "resting upon its views concerning accommodation of the same interests" as are involved in the N.L.R.A. 754 F.2d at 833, App. 7a. Thus, according to the Ninth Circuit, the City's actions were not preempted unless the City was "seeking to directly alter the substantive outcome" of the dispute or attempting to "dictate terms of the collective bargaining agreement." *Id.*[9],

[8] The Court of Appeals declined to address an additional basis upon which its initial "local interest" analysis was flawed. *See* 754 F.2d at 832, n. 2, App. 5a. Not only is the "local interest" doctrine limited to the kinds of situations outlined above, but this Court has clearly held that it applies only in connection with the "primary jurisdiction" branch of the labor preemption doctrine, and does not apply to preemption cases where substantive federal rights are infringed. *Allis-Chalmers Corp. v. Lueck*, No. 83-1748, —— U.S. ——, 53 U.S.L.W. 4463, 4466, n. 9 (Apr. 16, 1985); *Brown v. Hotel & Restaurant Employees*, —— U.S. ——, 104 S. Ct. 3179, 3187 (1984). *See also Belknap, Inc. v. Hale*, —— U.S. ——, 103 S. Ct. 3172, 3177 (1983).

[9] The Court of Appeals' reliance on the City's assumed motive in its "seeking to directly alter the substantive outcome" test is arguably inconsistent with its prior ruling in this case that the courts are barred from examining legislative motive in preemption analysis. *See Golden State Transit Corp. v. City of Los Angeles*, 686 F.2d at 759, App. 20a. Although the circumstances clearly suggest that the City's decision to condition Golden State's franchise on resolution of the dispute was designed to favor the Teamsters' position at the bargaining table, it is clear that the effect of

App. 8a. The City's demand that Golden State immediately resolve the labor dispute or face legislated extinction was impliedly found *not* to be an attempt to directly alter the "substantive" outcome of the labor dispute or "dictate terms of the collective bargaining agreement," and thus not preempted by the N.L.R.A. *Id.*[10]

REASONS FOR ISSUING THE WRIT

I. REVIEW BY THIS COURT IS NECESSARY TO AVOID EXCESSIVE LOCAL ENTANGLEMENT IN LABOR DISPUTES CONTRARY TO THIS COURT'S RULINGS AND THE EXPRESSED INTENTION OF CONGRESS

The decision below authorizes local governments to intervene in labor disputes, to readjust the balance of economic power between contending parties, and to pretermit the use of economic weapons and defenses by the parties, so long as the local government does not "dictate terms of the collective bargaining agreement." Thus, the court below expressly held that the City was free "merely" to insist upon resolution of a labor dispute as a condition of allowing Golden State to remain in business. 754 F.2d at 833, App. 8a. No decision of this Court has even intimated that local governments may decree the end of a work stoppage and compel agreement in face of the National Labor Relations Act's prescription that collective bargaining be a means to voluntary agreement free from government coercion. The Ninth Circuit's conclusion that local governments have such a broad role in labor disputes is plainly at odds with this Court's frequent decisions limiting local government interference with strikes and collective bargaining.

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the City's action was to strengthen the Teamsters' hand, disable Golden State, and thereby alter the balance of bargaining power between the parties. 754 F.2d at 832, n. 1, App. 4a.

[10] Judge Norris concurred only in result, expressly refusing to comment on the "serious deficiencies" in the majority's preemption analysis. 754 F.2d at 834, n. 1 (Norris, J., concurring), App. 10a.

The decision below creates an expansive exception to established principles of federal labor law preemption and threatens the most basic policies underlying the National Labor Relations Act. Congress has expressly stated that under federal law neither party is obliged to agree to any proposals made at the bargaining table; no governmental body, state or federal, possesses the power to compel agreement. Moreover, this Court has held that the basic principle of voluntary agreement, rather than government compulsion, requires that the parties be left free to engage in lawful forms of economic warfare and defense, without federal, state, or local government interference. The decision below transgresses both of these vital principles, requires a locally regulated business to sacrifice federal rights in order to remain in business, and approves local government involvement in labor disputes in a fashion never contemplated by this Court or by Congress. Review of the decision below is required to preserve the principles of the National Labor Relations Act and to avoid local government entanglement in labor disputes.

A. The Decision Below Conflicts with This Court's Rulings that the Right to Engage in Economic Warfare Must Be Preserved from Local Government Interference, and Conflicts as well with the Underlying Principle that the Parties to a Labor Dispute are Free to Resist Their Adversary's Demands

The court below held that local governments can deliberately alter the balance of economic power between contending parties,[11] so long as the local government does

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[11] The City's conduct here plainly altered the balance of power in the labor dispute in favor of the Teamsters. 754 F.2d at 832, n. 1, App. 4a. Whether this was done in order to help the Teamsters *per se*, or because the City believed, as one councilman stated, that the public interest requires "an operating company that has labor peace . . . [and drivers who are] making a decent living at a decent wage for their families," the legal effect was the same.

not "attempt to dictate terms of the collective bargaining agreement or alter the substantive outcome of the dispute." 754 F.2d at 833, App. 8a.[12] In so holding, the decision conflicts with the principles set forth in *Lodge 76, International Association of Machinists & Aerospace Workers v. Wisconsin Employment Relations Commission*, 427 U.S. 132 (1976), and *Local 20, Teamsters, Chauffeurs & Helpers Union v. Morton*, 377 U.S. 252 (1964), both of which establish that local governments cannot preclude the parties from relying upon their economic strength in a labor dispute. In *Morton*, this Court stated that "[i]n selecting which forms of economic pressure should be prohibited . . . Congress struck the 'balance . . . between the uncontrolled power of management and labor to further their respective interests.'" 377 U.S. at 258-59, *quoting Local 1976, United Brotherhood of Carpenters v. NLRB*, 357 U.S. 93, 98 (1958). In commenting on a state's right to upset the balance struck by Congress, the Court observed:

> This weapon of self-help, permitted by federal law, formed an integral part of the petitioner's effort to achieve its bargaining goals during negotiations with the respondent. Allowing its use is a part of the balance struck by Congress between the conflicting interests of the union, the employees, the employer and the community . . . . If the Ohio law . . . can be applied to proscribe the same type of conduct which Congress focused upon but did not proscribe . . . the inevitable result would be to frustrate the congressional determination to leave this weapon of self-help available, and to upset the balance of power

[12] The distinction postulated by the Court of Appeals—between local government officials dictating the "substantive" outcome of a dispute and merely mandating that the dispute be resolved—is no distinction at all. For government officials to require an employer to resolve a dispute immediately (or face the termination of his business) is to strip the employer of any right to resist his employees' pressure, and, as a practical matter, to require the employer to resolve the dispute on the employees' terms.

> between labor and management expressed in our national labor policy. *"For a state to impinge on the area of labor combat designed to be free is quite as much an obstruction of federal policy as if the state were to declare picketing free for purposes or by methods which the federal Act prohibits." Garner v. Teamsters Union*, 346 U.S. 485, 500 [(1964)].

377 U.S. at 259-60 (emphasis added, citations omitted).

The decision below clearly infringes upon Golden State's right to rely upon its economic strength in the face of the Teamsters' strike. Whether characterized as a "legitimate economic weapon" in itself or merely lawful resistance to a union's economic initiative, the employer's right to outlast its striking employees is the most basic economic weapon in its arsenal.[13] The City of Los Angeles denied Golden State that weapon by conditioning its right to continued existence upon prompt settlement of the labor dispute, thus altering the balance of power between the parties and frustrating the intent of Congress.

Moreover, the decision below forced Golden State to agree to terms proposed by the Teamsters, for absent such immediate agreement Golden State's franchise would not be renewed. It is fundamental to national labor policy that both sides to a labor dispute enjoy the right to agree *or disagree* with the terms proposed by the other, free from government interference.[14] The heart of the Court

[13] Nearly all of this Court's jurisprudence in the area of labor preemption has focused upon ensuring that *labor* remains free to employ *its* self-help weapons free of government interference. But there is no doubt that use of economic weapons is as much the prerogative of the employer as of organized labor. *See, e.g., Lodge 76*, 427 U.S. at 147; *id.* at 155 (Powell, J., concurring); *and see American Ship Building Co. v. NLRB*, 380 U.S. 300 (1965).

[14] Section 8(d) of the Taft-Hartley Act, 29 U.S.C. § 158(d), expressly states that neither employer nor union is obligated to agree to any proposal in bargaining. *See NLRB v. American National Insurance Co.*, 343 U.S. 395, 401-04 (1952). In prohibiting

of Appeals' error lies in its failure to appreciate that under the regime of the N.L.R.A., a local government has no more power to insist that a party resolve a labor dispute than it does to order that the parties agree to specific terms. "Congress intended that the parties should have wide latitude in their negotiations, unrestricted by any government power to regulate the substantive solution of their differences." *NLRB v. Insurance Agents' International Union*, 361 U.S. 477, 488 (1966). The employer's right to disagree, free from government interference, is meaningless if it disappears as soon as its employees decide to strike. To require one party to agree or suffer termination of its business is to deprive that party of its right to disagree, and thereby to eviscerate the principle of voluntary agreement through collective bargaining that lies at the heart of the Act.

A city's general interest in transportation, whether this interest is described as a "local interest" or a "peripheral concern," does not justify the direct intervention in a labor dispute approved below. *See Amalgamated Association of Street, Electric Railway & Motor Coach Employees v. Missouri*, 374 U.S. 74 (1963) (preemption of governor's attempt to take possession of a public transit company because of a threatened strike); *Amalgamated Association of Street, Electric Railway & Motor Coach Employees v. Wisconsin Employment Relations Board*, 340 U.S. 383 (1951) (statute that made it a misdemeanor for transit employees to strike is preempted).[15] If it is not

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the National Labor Relations Board from requiring agreement, it is clear that Congress intended to leave this area unregulated and to maintain an area of "free bargaining" protected from *all* government interference. *See New York Telephone Co. v. New York State Department of Labor*, 440 U.S. 519, 551-55 (1979) (Powell, J., dissenting). *E.g., Local 24, International Brotherhood of Teamsters v. Oliver*, 358 U.S. 283, 297 (1959) (state attempt to set substantive terms of agreement preempted).

[15] The lower courts have repeatedly condemned *any* attempt by government in *any* industry to coerce a labor settlement. *E.g., Oil*

permissible for the state to prevent a transportation union from striking because of the state's legitimate concern for a healthy transportation system, *see Amalgamated Association of Street, Electric Railway & Motor Coach Employees v. Wisconsin Employment Relations Board*, then it is similarly impermissible for a state to deprive an employer of his right or ability to resist either a strike or his employees' bargaining table demands. *See Delaware Coach Co. v. Public Service Commission*, 265 F. Supp. 648 (D. Del. 1967) (Public Service Commission's threatened revocation of bus company's license during lengthy strike is preempted). In short, a state's interest in local transportation provides no warrant for intruding upon the labor relations of private companies, and cannot justify the actions of the City Council in this case.

Indeed, reliance upon local transportation as a "peripheral concern" in this setting completely misperceives both the basis and the application of that concept.[16] Transportation may indeed be a legitimate "local inter-

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Chemical & Atomic Workers International Union, Local 5-283 v. Arkansas Louisiana Gas Co., 332 F.2d 64 (10th Cir. 1964) (enjoining issuance of a government report on the causes of a lengthy strike because of the coercive impact such a report would have in forcing the parties to settle); *General Electric Co. v. Callahan*, 294 F.2d 60, 67 (5th Cir. 1961) (finding the convening of an investigative commission, which had as its "obvious statutory purpose . . . to coerce agreement by invoking official action to mold public opinion with respect to a labor dispute . . . . This is quite contrary to the national policy not to compel agreement but instead only to encourage voluntary agreements . . . ."). *See also Cab Operating Corp. v. City of New York*, 243 F. Supp. 550 (S.D.N.Y. 1965) (mayor's attempt to mediate taxi strike is preempted); *Grand Rapids City Coach Lines, Inc. v. Howlett*, 137 F. Supp. 667 (W.D. Mich. 1955) (issuance of report on strike held preempted).

[16] It is more than slightly ironic that the Ninth Circuit, having properly rejected the City's interest in transportation as a "local interest," would characterize this interest as a "peripheral concern." As noted above, these are not two independent concepts, but rather branches of the same doctrine.

est," and transportation may in fact be a "peripheral concern" under the National Labor Relations Act. But free collective bargaining and resort to economic pressure lie at the very heart of the Act, and are in no sense "peripheral concerns." It is the federal interest in free collective bargaining that is sacrificed by the decision below, not the federal interest (if any) in local transportation.[17]

Moreover, the "local interest/peripheral concern" exception is applicable only in connection with the primary jurisdiction branch of labor preemption.[18] *See Lodge 76*, 427 U.S. at 137-38; *Belknap, Inc. v. Hale*, —— U.S. ——, 103 S. Ct. 3172, 3176-77 (1983). It is clearly established that the interests underlying the local interest/peripheral concern exceptions to the primary jurisdiction branch of labor preemption can have no application to state infringements upon federal rights, and cannot justify state regulation in areas that Congress intended to leave unregulated. *See Brown v. Hotel & Restaurant Employees*,

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[17] The expansive scope provided to the "local interest" in transportation is completely at odds with this Court's recent preemption decisions finding equally important "local interests" insufficient justification for conflict with important federal policies. *See, e.g., Capital Cities Cable, Inc. v. Crisp*, —— U.S. ——, 104 S. Ct. 2694 (1984) (local interest in consumption of alcoholic beverages, embodied in 21st Amendment, does not override federal communications law); *Michigan Canners & Freezers Association, Inc. v. Agricultural Marketing & Bargaining Board*, —— U.S. ——, 104 S. Ct. 2518 (1984) (local concern over sales of food does not override federal Agricultural Fair Practices Act); *Fidelity Federal Savings & Loan Association v. de la Cuesta*, 458 U.S. 141 (1982) (local interest in real property law cannot override Federal Home Loan Bank Board regulations).

[18] Despite the suggestion of the Court of Appeals to the contrary, 754 F.2d at 833, n. 4, App. 7a, no case of this Court has ever mentioned the "peripheral concern" exception other than in connection with primary jurisdiction preemption, *e.g., Belknap v. Hale, supra*, and *Brown v. Hotel & Restaurant Employees*, —— U.S. ——, 104 S. Ct. 3179 (1984), explains concisely why this must be so. *See* note 19, *infra*.

104 S. Ct. at 3187.[19] There is no occasion to balance state versus federal interests where, as here, Congress clearly intended to leave an employer free to disagree with his employees' bargaining demands, *see* 29 U.S.C. § 158(d), and to defend himself in the face of a strike.

More importantly, *Lodge 76*'s extensive teaching on labor preemption simply cannot be reconciled with a local regulation that bars an employer from attempting to weather a strike or that requires the employer to reach immediate agreement in order to remain in business. *See Lodge 76*, 427 U.S. at 142-51. In *Lodge 76*, this Court rejected the artificial distinction between government actions involving the "substantive outcome" of a labor dispute and merely conditioning the operation of a business upon "resolution" of the dispute, insofar as this Court held any state regulation of "the choice of economic weapons that may be used as part of collective bargaining [exerts] considerable influence upon the substantive terms on which the parties contract." *Lodge 76*, 427 U.S. at 153, *quoting NLRB v. Insurance Agents' International Union*, 361 U.S. at 490. *See also New York Telephone Co. v. New York State Department of Labor*, 440 U.S. 519, 552-53 (1979) (Powell, J., dissenting). The distinction relied upon by the court below is thus no distinction at all, for the results of the collective bargaining process are the product of the parties' relative economic strength. *See NLRB v. Insurance Agents' International Union*, 361 U.S. at 489-90.

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[19] Where, as is the case here, "the state law regulates conduct that is actually protected by federal law, . . . preemption follows not as a matter of protecting primary jurisdiction, but as a matter of substantive right. Where . . . the issue is one of an asserted substantive conflict with a federal enactment"—as it is in this case —"then 'the relative importance to the state of its own law is not material . . . for the Framers of our Constitution provided that the federal law must prevail.'" 104 S. Ct. at 3187 (citations omitted). *See also Allis-Chalmers Corp. v. Lueck*, No. 83-1748, —— U.S. ——, 53 U.S.L.W. at 4466, n. 9 (Apr. 16, 1985) (reliance on peripheral concern exception improper outside of primary jurisdiction context).

Neither is the ruling below justified by the *New York Telephone* case, in which this Court allowed a state to provide unemployment benefits to strikers, even though this had an indirect impact upon the relative bargaining power of parties to a labor dispute. The critical fact in the *New York Telephone* case, completely absent here, was that Congress had tacitly approved such benefits despite their impact. Each member of this Court who concluded that such benefits were permissible also found that the local scheme enjoyed the implicit approval of Congress—a determinative finding for preemption analysis. *See New York Telephone Co.*, 440 U.S. at 534-40 (Stevens, J., joined by White, J. and Rehnquist, J.); *id.* at 546-47 (Brennan, J., concurring in the result); *id.* at 548, 550-51 (Blackmun, J., joined by Marshall, J., concurring in the judgment).[20]

Moreover, quite apart from the complete absence of any congressional approval of the City's intervention in this case, there is a vast difference between the distribution of unemployment benefits, as part of a broad public welfare program having an incidental impact upon labor disputes, and the situation here, where there has been direct intervention in a specific dispute, and an employer's right to operate has been conditioned upon resolution of the dispute. This is not a " 'neutral' state statute . . . which may have an incidental effect on relative bargaining strength," but rather a local government action that directly alters "the bargaining position of employers or unions." *See Lodge 76*, 427 U.S. at 156 (Powell, J., concurring). *See also New York Telephone Co.*, 440 U.S. at 533 (plurality opinion).

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[20] At least five members of this Court indicated that they would find even this *indirect* alteration of the parties' bargaining power preempted were it not for congressional approval. *See New York Telephone Co.*, 440 U.S. at 549-51 (Blackmun, J., concurring in the judgment); *id.* at 551-67 (Powell, J., dissenting). *See also id.* at 546-47 (Brennan, J., concurring in the result).

In short, the policy of voluntary agreement through collective bargaining and freedom from government interference with the parties' use of their legitimate economic weapons are at the heart of the Act. The City here sought to compel resolution of a dispute, where the Act requires that the parties must be permitted to bargain freely, to agree or to disagree, without government coercion. The City's action directly deprived Golden State of its federal right to disagree and of its federal right to resist a union's economic pressure, and thus was unconstitutional.

B. The Decision Below Raises A Vitally Important Issue That Should Be Resolved By This Court

The opinion below is not only wrong, but threatens to radically reshape the structure of collective bargaining in any industry subject to state or local regulation. If local government officials can insist that a taxi company resolve a labor dispute as a condition of franchise renewal, then the local interest in distribution of alcoholic beverages would justify similar measures where a restaurant's liquor license was subject to renewal. The state's interest in education would permit public officials to hold the license of a private school hostage where the school was engaged in a dispute with its striking teachers. Under the reasoning of the Ninth Circuit, so long as the local government does not "attempt to dictate terms of the collective bargaining agreement," local government, in support of its vision of the "public interest," may compel resolution of a labor dispute by altering the relative economic strength of the parties and coercing employer concessions.

In attempting to distinguish between local government attempts to dictate the precise terms of an agreement and merely requiring "resolution," the decision below rests upon a remarkably naive view of collective bargaining completely at odds with the conceptual framework of national labor policy. As this Court stated in *NLRB v. Insurance Agents' International Union*, collective bargain-

ing "cannot be equated with an academic collective search for truth," but is the product of a system whereby the right to disagree and the right to resort to economic pressure are "part and parcel" of good faith negotiations. 361 U.S. at 488-89. No one would seriously contest that for local government to require a *union* to settle a strike within 30 days or cease to exist would plainly require the union to settle on the employer's terms, in contravention of the requirements of Act. To require the employer to resolve a dispute or face loss of its right to do business is equally to compel settlement on the *employees'* terms. Under the regime established by the National Labor Relations Act, permissible forms of economic resistance cannot be dissociated from the substantive resolution of labor disputes. Allowing local government to compel concessions from one party as a condition of remaining in business is just as clearly antithetical to free collective bargaining as is direct dictation of the terms of agreement.

The Court of Appeals' view of labor preemption and the prerogative of local government bodies is thus by nature one-sided. Only the employees and their union are in a position to take advantage of local government's newly granted authority to intervene in a labor dispute, for only the employer is likely to be subject to regulatory regimes that offer a vehicle for direct intervention and sanctions by local government bodies. Innumerable cases of this Court have made it all too clear that local government enjoys no comparable power to halt *employee* work stoppages or to coerce *union* concessions. The opinion below shifts the arena for negotiations from the collective bargaining table to the City Council chambers, and transforms the principal weapon in the armory of the union from the economic force of the strike to the political force of the local ordinance.

As a practical matter, if this Court does not grant the petition, the question presented—whether a municipality

may condition a company's right to do business on the resolution of a labor dispute—may very well escape consideration by this Court at any time. Relying upon what had been clear precedent precluding such municipal intervention, Golden State elected to insist upon its rights and continued to resist the City's pressure and the union's demands. Because of that continued resistance, Golden State has actually suffered the sting of the City's ultimatum and been denied its right to operate.

In light of the decision below—should it stand—it is unlikely that one would ever again encounter such an employer. Deprived by this decision of the necessary assurance that there exists federal protection from such governmental pressure, an employer must do what is necessary to save its business; it must bow to the coercive pressure and settle the dispute at all costs. Having avoided all punitive action by the City by acceding to the pressure and entering into a settlement on the union's terms, it is unlikely that an employer would be able to present a justiciable controversy to the federal courts to complain of the earlier coercion.

Therefore, both in terms of its broad practical effect and in its conceptual departure from established principles of labor preemption, this petition presents important issues worthy of the Court's attention.

CONCLUSION

Because the decision below conflicts with principles of labor preemption applied by this Court, allows local government officials directly to intervene in labor disputes on behalf of striking employees, and deprives employers of the right to resist their employee's demands and to combat a strike, a writ of certiorari should issue and the decision below should be reversed.

Respectfully submitted,

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APPENDIX

APPENDIX

UNITED STATES COURT OF APPEALS
NINTH CIRCUIT

CA No. 83-6641

GOLDEN STATE TRANSIT CORPORATION,
a California corporation,
Plaintiff/Appellant,

v.

CITY OF LOS ANGELES, a municipal corporation,
Defendant/Appellee.

Argued and Submitted Oct. 3, 1984

Decided Feb. 26, 1985

Zachary D. Fasman, Kathleen Johnson Raynsford, David B. Siegel, Crowell & Moring, Washington, D.C., Daniel R. Shulman, Patricia A. Knipe, Gray, Plant, Mooty, Mooty & Bennett, Minneapolis, Minn., for plaintiff-appellant.

John F. Haggerty, Los Angeles, Cal., for defendant-appellee.

Appeal from the United States District Court
for the Central District of California

Before FARRIS, ALARCON and NORRIS, Circuit Judges.

FARRIS, Circuit Judge:

Golden State Transit purchased the assets of the bankrupt Yellow Cab Company in 1977 and the City thereafter approved the transfer of Yellow Cab's franchise. On March 31, 1980, Golden State made a timely application for renewal of its taxicab franchise to become effective upon its expiration on March 31, 1981. The City's Department of Transportation reported that Golden State was in full compliance with all of the terms and conditions of its franchise. Acting on this report, the Board of Transportation Commissioners recommended approval of the franchise renewal to the Transportation and Traffic Committee of the City Council on September 4, 1980 and again on January 26, 1981. The Transportation and Traffic Committee recommended to the City Council that Golden State be granted a five-year renewal franchise.

An ordinance approving Golden State's franchise as well as ordinances approving twelve other taxicab franchises operating within the City were placed on the City Council calendar for February 11, 1981. In October 1980, Golden State's agreement with the Teamster's Union expired and they failed to reach a new agreement. On February 5, 1981, the Teamsters informed the City of the labor dispute. On February 11, 1981, Golden State drivers went out on strike.

All pending franchises except Golden State's were renewed on February 11, 1981, including one that had been disapproved by the Department of Transportation. The ordinance pertaining to Golden State was continued to February 17, 1981 to take effect if the Council found, on or before March 27, 1981, that the extension was in the best interest of the City.

On March 23, 1981, the City Council considered a motion to adopt a finding that the 30-day extension of

Golden State's franchise was in the best interests of the City. The motion was defeated eleven votes to one. Golden State brought suit in district court, charging that the City's action was preempted by the NLRA, as well as being violative of the due process and equal protection clauses of the United States Constitution. The district court granted Golden State's request for a preliminary injunction preserving its status as a franchised operation on the basis of its preemption claim. *See Golden State Transit Corp v. City of Los Angeles*, 520 F. Supp. 191, 194 (C.D.Cal. 1981). We reversed. *Golden State*, 686 F.2d 758, 760-761 (9th Cir. 1982), *cert. denied*, 459 U.S. 1105, 103 S.Ct. 729, 74 L.Ed.2d 954 (1983).

Golden State thereafter amended its complaint to allege a violation of the Sherman Act by the City. The district court granted summary judgment against Golden State on the grounds that the City was immune from antitrust liability. *Golden State*, 563 F.Supp. 169, 172 (C.D.Cal. 1983). We affirmed. *Golden State*, 726 F.2d 1430 (9th Cir.), *petition for cert. filed*, 53 U.S.L.W. 3190 (U.S. Sept. 10, 1984) (No. 84-378). We denied the petition for rehearing and en banc review. The district court then granted summary judgment against Golden State on its remaining claims. Golden State appealed.

Two questions are presented for our *de novo* review:

Was the City preempted from refusing to renew Golden State's taxicab franchise?

Did Golden State allege a sufficient constitutionally protected property interest to justify a trial on the question of a due process violation?

We answer both questions negatively and affirm.

PREEMPTION ISSUE

The Supreme Court has articulated two distinct bases for preemption of state action by the NLRA. The first, which is founded on the primary jurisdiction of the

NLRB, preempts state action concerned with conduct that is at least arguably prohibited or protected by the Act. *See San Diego Building Trades Council v. Garmon*, 359 U.S. 236, 245, 79 S.Ct. 773, 779, 3 L.Ed.2d 775 (1959). The state action will not, however, be preempted if the conduct regulated is only a peripheral concern of the Act or touches interests deeply rooted in local feeling and responsibility. *Id.* at 243-44, 79 S.Ct. at 778-79. A supplemental branch of preemption prohibits state action concerning conduct that was intended to be unregulated because it was considered a proper economic weapon for use by parties to a labor dispute. *Lodge 76, Int'l Ass'n of Machinists & Aerospace Workers v. Wisconsin Employment Relations Comm'n*, 427 U.S. 132, 140, 96 S.Ct. 2548, 2553, 49 L.Ed.2d 396 (1976).

The district court granted Golden State a preliminary injunction based upon its preemption claim. On interlocutory appeal, we held that the power of taxicab franchise renewal was a matter of such local interest that preemption "must rest upon 'compelling congressional direction.'" 686 F.2d at 760 (citation omitted). Finding no such evidence, we vacated the district court's grant.[1] Then, in opposition to the City's motion for summary judgment, Golden State introduced legislative history of an amendment to the NLRA and alleged that it demonstrated Congress' specific intent to preempt actions such as the City's. The district court found the legislative history unpersuasive and granted the City's motion.

[1] We did uphold the district court's determination that the nonrenewal of Golden State's franchise altered the balance of economic power in the labor dispute, noting that it was supported by "ample evidence in the record." 686 F.2d at 759. For this reason, we cannot agree with Judge Norris' suggestion, in his concurrence, that summary judgment was appropriate because Golden State has failed to present any evidence supporting its claim that the City's action affected its bargaining power. To affirm the trial court's grant of summary judgment to the city, we must view the evidence in the light most favorable to Golden State. *See Fruehauf Corp. v. Royal Exchange Assurance of America*, 704 F.2d 1168, 1171 (9th Cir. 1983). The district court previously found that the City's action did affect Golden State's bargaining power. We cannot disregard that finding.

Initially, Golden State argued on this appeal that the district court erred in finding that the legislative history cited by Golden State did not demonstrate a "compelling congressional direction" to preempt the City's action. Golden State now argues that application of the local interest exception to NLRA preemption in this case was inappropriate. We agree with Golden State. Because the district court's decision is supported by other grounds, however, we affirm its grant of summary judgment on the preemption issue.[2]

The City's renewal of taxicab franchises was held to fall within the local interest exception because we found NLRA preemption harder to infer when a state is regulating such a "traditionally local matter'" as the "use of streets and highways." 686 F.2d at 760 (citing *Allen-Bradley Local No. 1111 v. Wisconsin Employment Relations Board*, 315 U.S. 740, 749, 62 S.Ct. 820, 825, 86 L.Ed. 1154 (1942), quoted in *Lodge 76*, 427 U.S. at 136 n. 2, 96 S.Ct. at 2551 n. 2). Our reliance on *Allen-Bradley* was misplaced.[3] That case dealt with a violent

[2] Golden State also contends that the local interest exception only applies to preemption based on the primary jurisdiction of the NLRB. Golden State thus argues that the local interest exception is inapposite, because this case involves substantive rights to economic self-help under the NLRA. In the past, the Supreme Court has applied the local interest exception to matters of substantive economic rights. *See, e.g., Lodge 76*, 427 U.S. at 136-37, 154-55, 96 S.Ct. at 2551-52, 2560. Recent Supreme Court decisions, however, indicate that this exception is not appropriate in cases involving substantive rights. *See, e.g., Brown v. Hotel & Restaurant Employees & Bartenders Int'l Union Local 54*, —— U.S. ——, 104 S.Ct. 3179, 3187, 82 L.Ed.2d 373 (1984). Because we affirm on another ground we do not address this issue.

[3] The City argues that our prior decision on the preliminary injunction is law of the case and reconsideration of it is barred. This assertion is wrong. As a general rule, decisions on prelimi-

and unruly picket outside of the employer's factory in which the strikers were blocking the streets and threatening working employees. Moreover, the Supreme Court has strictly limited the local interest exception to matters involving violence and tort actions, such as libel and intentional infliction of emotional distress. *See, e.g., New York Telephone Co. v. New York State Labor Dep't*, 440 U.S. 519, 550-51, 99 S.Ct. 1328, 1346, 59 L.Ed.2d 553 (1979) (Blackmun, J., joined by Marshall, J., concurring in plurality opinion); *Lodge 76*, 427 U.S. at 136, 96 S.Ct. at 2551 (focus of local interest exception is the "[p]olicing of actual or threatened violence . . . or destruction of property"). There are no allegations of violent, destructive, or tortious conduct in this case.

The First Circuit has extended the local interest exception to hospital cost containment legislation. *See Massachusetts Nursing Ass'n v. Dukakis*, 726 F.2d 41, 44 (1st Cir. 1984). That decision, however, was also based upon strong congressional support for such programs and the indirect effect the challenged legislation had on labor relations. *Id.* at 43-45. Supreme Court precedent and the distinguishing circumstances in *Dukakis* cause us to conclude that the extension of the local interest exception to this case was unwarranted. This conclusion does not, however, resolve the matter.

The peripheral concern exception to labor preemption recognizes that the NLRA "does not withdraw 'from the States . . . power to regulate where the activity regulated [is] a merely peripheral concern of the [act].'" *Lodge 76*, 427 U.S. at 137, 96 S.Ct. at 2551-52 (footnote

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nary injunctions do not constitute law of the case and "parties are free to litigate the merits." *City of Anaheim v. Duncan*, 658 F.2d 1326, 1328 n. 2 (9th Cir. 1981). In addition, we may exercise our discretion to hear "contrary controlling authority on the applicable issues of law." *Sidney v. Zah*, 718 F.2d 1453, 1458 (9th Cir. 1983) (citations omitted). This appeal is described by both of these propositions. We therefore reject the City's contention.

omitted). This exception allows states to regulate matters when there is only a remote possibility of conflict between such regulation and national labor policy. *See id.* at 137-38 n. 3, 96 S.Ct. at 2551-52 n. 3. Preemption is thus required only when a state "enforce[s] statutes or rules of decision resting upon its views concerning accommodation of the same interests" focused upon by the NLRA. *Lodge 76*, 427 U.S. at 140 n.4, 96 S.Ct. at 2553 n. 4 (quoting Cox, *Labor Law Preemption Revisited*, 85 Harv. L. Rev. 1337, 1352 (1972). Similarly, in *New York Telephone*, the Court held that New York's unemployment compensation program, which authorized payments to striking workers, was not preempted, in part, because the program was not intended to regulate labor relations "but instead to provide an efficient means of insuring employment security." 440 U.S. at 533, 99 S.Ct. at 1337 (Stevens, J., plurality opinion).[4] Nothing in the record indicates that the City's refusal to renew or extend Golden State's franchise until an agreement was reached and operations resumed was not concerned with transportation. Such a concern does not implicate or conflict with federal labor policy. There is therefore no basis to preempt the City's action.

In any regulated industry, a myriad of governmental decisions from rate-setting to the establishment of safety standards are bound to affect labor relations in that industry. If local regulation of public utilities is not to be

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[4] Although the Supreme Court has indicated that the local interest exception does not apply to preemption based upon substantive economic rights, *see supra* footnote 2, the considerations represented by the peripheral concern exception are not similarly limited. There is no doubt that the focus of the peripheral concern exception on the potential for conflict between state regulation and federal labor policy is an appropriate consideration under both branches of preemption. *See, e.g., Brown*, —— U.S. ——, 104 S.Ct. at 3187 (examining state regulation of union officials for possible conflict with employees' rights); *see also New York Telephone.*

unduly restricted, only actions seeking to directly alter the substantive outcome of a labor dispute should be preempted. *Cf. Dukakis*, 726 F.2d at 45; *Amalgamated Transit Union, Div. 819 v. Byrne*, 568 F.2d 1025, 1042 (3d Cir. 1977) (en banc) (Adams, J., dissenting). The City did not attempt to dictate terms of the collective bargaining agreement or alter the substantive outcome of the dispute. It merely insisted upon resolution of the dispute as a condition to franchise renewal. The City's refusal to renew Golden State's franchise is therefore not preempted by the NLRA.

DUE PROCESS ISSUE

Golden State contends that the assurances made by various City officials regarding franchise renewal constitute a mutual understanding sufficient to create a constitutionally protectable property interest under the *Board of Regents v. Roth*, 408 U.S. 564, 92 S.Ct. 2701, 33 L.Ed.2d 548 (1972) and *Perry v. Sindermann*, 408 U.S. 593, 92 S.Ct. 2694, 33 L.Ed.2d 570 (1972) formulation. There is no evidence of the mutual understanding necessary to establish such an interest; at most, Golden State had a unilateral expectation of renewal. 686 F.2d at 760-61.

Golden State's assertion that *Vail v. Board of Education of Paris Union School District 95*, 706 F.2d 1435 (7th Cir. 1983), *aff'd per curiam*, —— U.S. ——, 104 S.Ct. 2144, 80 L.Ed.2d 377 (1984) establishes the sufficiency of its interest in franchise renewal is mistaken. In that case, the school board voted to assure the plaintiff that his one-year coaching contract would be renewed for a second year. 706 F.2d at 1436. The school board was the body authorized to make hiring decisions and their informal assurance was thus sufficient to bind the school district. In the present case, franchise renewal is a legislative act, *see, e.g., Monarch Cablevision v. City Council*, 239 Cal.App.2d 206, 210, 48 Cal.Rptr. 550, 553

(1966), and all legislative power is vested in the City Council to be exercised by ordinance. Los Angeles City Charter § 21. The City officials that allegedly promised Golden State "automatic" franchise renewal had no authority to act for the City and therefore no mutual understanding was created on the basis of their representation.

Golden State, relying on *Doran v. Houle*, 516 F.Supp. 1231 (D.Mont. 1982), contends that licensees have a protected property interest in their license renewals. We vacated the *Doran* decision on precisely the grounds that Golden State cites it for. *See* 721 F.2d 1182 (9th Cir. 1983), *cert. denied*, —— U.S. ——, 104 S.Ct. 2152, 80 L.Ed.2d 538 (1984). In that decision, the federal government's termination of the plaintiff veterinarians' permits to use testing kits to check for a contagious disease in cattle was upheld. There was no showing of a mutual agreement to contradict the otherwise unfettered discretion the government retained over the use of the kits. 721 F.2d at 1186. We held that the "mere fact a person has received a government benefit in the past, even for a considerable length of time, does not, without more, rise to the level of a legitimate claim of entitlement." *Id.* (citation omitted).

Affirmed.

NORRIS, Circuit Judge, concurring in part and concurring in the judgment.

I concur in the judgment of the court affirming the district court's grant of summary judgment for the City. I also concur in that part of the majority opinion holding that Golden State's due process claim must fall because Golden State has failed to establish that a constitutionally protectable property interest was created.

I write separately, however, because I believe it is wholly unnecessary to the disposition of this appeal to

address Golden State's legal argument that the NLRA prohibits a City from refusing to renew Golden State's franchise under what Golden State alleges to be the facts of this case.[1] Golden State's preemption argument is constructed on two factual premises: (1) that the City's purpose in refusing to renew the franchise was to assist the Teamsters in their labor dispute with Golden State, and (2) that the effect of the City's refusal to renew the franchise was to destroy Golden State's economic ability to resist the strike.[2] Golden State cites no evidence, however, that gives rise to a triable issue of fact with respect to either of these factual allegations. As a result, we should hold that the City is entitled to summary judgment on the narrow ground that Golden State has offered no substantial evidence to support its critical factual allegations. It is totally unnecessary for us to go further and discourse on the legal question of the possible preemptive effect of the NLRA on the City's action.

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[1] Because I view the majority's discussion of the preemption issue as dicta, I refrain from commenting on what I perceive to be serious deficiencies in its analysis.

[2] In short, Golden State's argument is that the City's refusal to renew its franchise is preempted by the NLRA because it constituted an attempt to dictate the terms of a collective bargaining agreement or because it otherwise altered the relative bargaining powers of the parties to a labor dispute. As support for this argument, Golden State relies on the line of cases recognizing that certain state actions that alter the relative bargaining positions of labor and management may "frustrate effective implementation of the Act's processes" and therefore be preempted. *E.g. Machinists v. Wisconsin Emp. Rel. Comm'n*, 427 U.S. 132, 147-48, 96 S.Ct. 2548, 2556-57, 49 L.Ed.2d 396 (1976).

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

No. CV 81-1519-CHH

GOLDEN STATE TRANSIT CORPORATION,
a California corporation, doing business as
Yellow Cab of Los Angeles,
Plaintiff,

v.

CITY OF LOS ANGELES, a municipal corporation,
Defendant.

[Filed Oct. 20, 1983]

ORDER GRANTING SUMMARY JUDGMENT

This matter is before the Court on defendant's motion for summary judgment. The Court has considered the points and authorities submitted by the parties, the supplemental declaration of Eugene Maday, and the oral argument of counsel.

IT IS HEREBY ORDERED that defendant's motion for summary judgment is granted. This Order is based upon the attached Statement of Uncontroverted Facts and Conclusions of Law.

Dated: October 18, 1983.

/s/ Cynthia Holcomb Hall
CYNTHIA HOLCOMB HALL
United States District Judge

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

No. 81-1519-CHH (GX)

GOLDEN STATE TRANSIT CORPORATION,
a California corporation, doing business as
Yellow Cab of Los Angeles,
Plaintiff,

vs.

CITY OF LOS ANGELES, a municipal corporation,
Defendant.

Date: October 17, 1983

Place: Room 10

Time: 10:00 am.

[Filed Oct. 20, 1983]

PROPOSED STATEMENT OF
UNCONTROVERTED FACTS AND
CONCLUSIONS OF LAW

1. Plaintiff, Golden State Transit Corporation, doing business as Yellow Cab of Los Angeles, is a corporation organized and existing under and by virtue of the laws of the State of California, and doing business in and with its principal office in the City of Los Angeles.

2. Defendant, City of Los Angeles, is a chartered City organized and existing under the Constitution and laws of the State of California.

3. Taxicab service in the City of Los Angeles involves the operation of taxicabs under franchises or other permits granted by the City of Los Angeles. There is no way to operate a taxicab service in said City other than through the grant of a franchise or other permit from the City. The City of Los Angeles thus has the exclusive control over who will be permitted to operate a taxicab service within its limits.

4. Defendant, City of Los Angeles, is able to grant franchises for the operation of taxicab service.

5. On March 31, 1980, plaintiff applied in a timely manner for renewal of its taxicab franchise, said renewal to take effect upon the expiration of the existing franchise. The defendant's Department of Transportation stated in its report to the Board of Transportation Commissioners that plaintiff was in full compliance with all terms and conditions of the franchise.

6. Defendant's power to grant a taxicab franchise flows from the Los Angeles City Charter, § 3, Subdivision 8, Los Angeles Muncipal Code § 71.12(b) and Procedure Ordinance No. 58,200, codified in Los Angeles Administrative Code Division 13, Chapter 1, Articles 2 through 13, inclusive.

7. The specific procedure for granting and renewal of any franchise is established under Paragraph A and Paragraph D of Subdivision 8 of § 3 of the Los Angeles City Charter providing in part that:

> (A) "The Council shall adopt an ordinance which shall establish the procedure . . . for granting a new franchise [to the holder of an existing franchise] for a period not exceeding ten yers, to replace a franchise about to expire as authorized in Paragraph D of this subdivision . . ."
>
> (D) "The City may, by ordinance, adopted five years or less prior to the expiration of any franchise, grant

to the holder of such franchise about to expire, such new franchise to run for a period not to exceed ten years from the date of expiration of the franchise it replaces. All such franchises so granted shall be in accordance with the procedure ordinance at the time in force, and shall carry all the conditions required in the original franchise . . ."

8. By Ordinance Number 149,825, effective July 17, 1977, the Los Angeles City Council enacted an ordinance granting a taxicab service franchise to plaintiff, more particularly entitled "An ordinance consenting to the assignment by Yellow Cab Company of California of the franchise [to Los Angeles Yellow Cab] granted by ordinance and amendments herein prescribed. "Under the terms of said ordinance, plaintiff's franchise was to expire on October 29, 1980. By ordinance Numbers 154,409 and 154,713, the above ordinance was amended to extend the expiration period until March 31, 1981. None of these ordinances provided for an extension beyond the term of the franchise.

9. Approval of the renewal of plaintiff's franchise was recommended by the Board of Transportation Commissioners in its report to Transportation and Traffic Committee of the City Council on September 4, 1980, and again on January 26, 1981. On November 19, 1980, the Transportation and Traffic Committee recommended to the full City Council that a five year renewal franchise be granted to plaintiff.

10. Of the thirteen taxicab franchises within the City of Los Angeles, plaintiff was among six recommended by the Department of Transportation for five year renewal; six of the remaining seven franchises were recommended for approval for one year; one franchise was not recommended for approval.

11. The ordinance approving plaintiff's franchise as well as ordinances approving the other franchises (in-

cluding the franchise which had been disapproved by the Department of Transportation), were placed on the City Council calendar for February 11, 1981.

12. on February 5, 1981, by letter to the Mayor and all Council members, the joint council of Teamsters informed the City Council that a labor dispute existed between plaintiff and the Teamsters, who represented the Yellow Cab drivers. All of the other franchises scheduled for granting were renewed on February 11, 1981. On February 11, 1981, the Yellow Cab drivers went out on strike.

13. On February 11, 1981, the City Council adopted the Committee report and ordinance granting multi-year franchises to five of the enumerated companies. Plaintiff was deleted from the list of companies, and the ordinance pertaining to its multi-year franchise was continued for consideration to February 17, 1981. The Committee report stated that all six companies, including plaintiff, were in full compliance with all terms and conditions of their franchises. That Committee report was adopted.

14. On February 17, 1981, the City Council considered the question of the franchise for plaintiff. The multi-year ordinance which had been continued from February 11, 1981, was not presented to the City Council at that time. Instead, a substitute ordinance was presented which provided for an extension of the Golden State franchise to April 30, 1981, provided, among other things, that the City Council was to find on or before March 27, 1981, that the 30-day extension ordinance was in the best interests of the City.

15. On March 23, 1981, the City Council considered a motion made by the chairperson of the Transportation and Traffic Committee that the City Council adopt a finding that the 30-day extension of the plaintiff's franchise was in the best interest of the City.

16. At the hearing of March 23, 1981, a representative of the Teamsters appeared before the City Council and urged the Council not to renew or grant an extension to plaintiff's franchise.

17. At the same hearing a representative of an association of taxi drivers appeared before the City Council, stating that with the non-operation of Yellow Cab taxicab drivers were able to make for the first time, a decent minimal living and further stated that doormen of the major hotels had reported to him that they were getting a better quality of service with the non-operation of Yellow Cab.

18. The General Manager of the City's Department of Transportation, the City department which regulates taxicabs, informed the City Council, at the hearing, that the department had not received any complaints from lack of service since Yellow Cab had gone out on strike February 11. He further stated that prior to the Yellow Cab strike there were too many taxicabs operating in the City. One of the Councilmen commented that a more healthy taxicab industry would actually be created if Yellow Cab's franchise was not renewed.

19. The motion to make the finding to allow for the extension was defeated by the City Council 11 votes to one.

CONCLUSIONS OF LAW

1. Any Finding of Fact deemed a Conclusion of Law is incorporated herein.

2. Plaintiff has conceded that it cannot prevail on its equal protection claim under the standard articulated in *Golden State Transit Corp. v. City of Los Angeles*, 686 F.2d 758 (9th Cir. 1982).

3. Plaintiff did not have a legitimate claim of entitlement to renewal of its taxicab franchise. The informal

assurances allegedly received from various city officials do not rise to the level of the "binding understanding" between Golden State and the City that is needed to create a constitutionally protected property interest. *See Perry v. Sinderman*, 408 U.S. 593, 599, 92 S. Ct. 2694, 2699 (1972); *Board of Regents v. Roth*, 408 U.S. 564, 92 S. Ct. 2701 (1972).

4. The National Labor Relations Act does not preempt the City's franchise renewal power. *Golden State Transit, supra*, 686 F.2d at 760. The legislative history cited by plaintiffs does not support a contrary conclusion.

Dated: October 18, 1983.

/s/ Cynthia Holcomb Hall
CYNTHIA HOLCOMB HALL
United States District Judge

UNITED STATES COURT OF APPEALS
NINTH CIRCUIT

No. 81-5369

GOLDEN STATE TRANSIT CORPORATION, ETC.,
Plaintiff/Appellee,
v.

CITY OF LOS ANGELES,
Defendant/Appellant.

Argued and Submitted May 7, 1982

Decided Sept. 7, 1982

Certiorari Denied Jan. 10, 1983
See 103 S.Ct. 729

John F. Haggerty, Asst. City Atty., Los Angeles, Cal., for defendant-appellant.

Thomas R. Sheridan, Simon & Sheridan, Los Angeles, Cal., argued, for plaintiff-appellee; Michael R. Mitchell, Woodland Hills, Cal., on brief.

Appeal from the United States District Court
for the Central District of California

Before ANDERSON, SKOPIL and CANBY, Circuit Judges.

CANBY, Circuit Judge.

The City of Los Angeles (City) appeals from the district court's grant of a preliminary injunction enjoining the City from allowing the taxicab franchise of Golden State Transit Corporation d/b/a Yellow Cab of Los Angeles (Yellow Cab) to terminate or from treating the franchise as if it had expired. *See Golden State Transit Corp. v. City of Los Angeles*, 520 F.Supp. 191 (C.D.Cal. 1981). Yellow Cab alleged that the City's refusal to grant a renewal of Yellow Cab's taxicab franchise constituted unlawful interference with the ongoing collective bargaining between Yellow Cab and Teamsters Local No. 572 and deprived Yellow Cab of due process and equal protection of the law in violation of 42 U.S.C. § 1983. We agree with the district court's conclusion, 520 F.Supp. at 193, that the balance of hardships in this case tips sharply in Yellow Cab's favor. Nonetheless, since Yellow Cab does not have a fair chance of success on the merits, *see Benda v. Grand Lodge of International Ass'n of Machinists & Aerospace Workers*, 584 F.2d 308, 315 (9th Cir. 1978), *cert. dismissed*, 441 U.S. 937, 99 S.Ct. 2065, 60 L.Ed.2d 667 (1979), we conclude that the district court abused its discretion in granting the preliminary injunction. Accordingly, we vacate the preliminary injunction.

Unlawful Interference in a Labor Dispute

The City contends that its actions did not constitute an impermissible interference in a labor dispute because (1) such interference was not the purpose behind its actions and (2) federal labor law does not preempt the City from exercising its authority to deny renewal of a taxicab franchise. We conclude that Yellow Cab has little chance of making the requisite showing that Congress intended to bar a city from refusing to renew the taxicab franchise of a company engaged in a collective bargaining dispute with its drivers. Thus, with respect to the preemption issue, Yellow Cab has failed to satisfy the "serious ques-

tion" requirement for issuance of a preliminary injunction. *See id.* at 314-15.

The district court found that "the City's true purpose in declining to renew plaintiff's [Yellow Cab's] franchise" as "substantively to influence the economic (as opposed to political) weapons of Yellow Cab and its Teamster drivers in their labor negotiation efforts, by diminishing the economic power of the drivers." Excerpt of Record at 116. Courts, however, are not permitted to inquire into alleged motives of legislators. Rather, they must look to the effects of the legislative acts. *Daniel v. Family Security Life Insurance Co.*, 336 U.S. 220, 224, 69 S.Ct. 550, 552, 93 L.Ed. 632 (1949); *see United States v. Des Moines Navigation & Railway Co.*, 142 U.S. 510, 544-45, 12 S.Ct. 308, 317, 35 L.Ed. 1099 (1892). The district court did determine that one *effect* of the denial of Yellow Cab's franchise renewal was to alter the balance of power in the collective bargaining dispute in favor of the union. *See* 520 F.Supp. at 194. That determination is not clearly erroneous. *See* Fed.R.Civ.P. 52(a). There is ample evidence in the record to support a finding that by threatening to deny and ultimately denying renewal of Yellow Cab's franchise, the city deprived Yellow Cab of an economic weapon—the opportunity simply to outlast the strikers.

In view of the effect of the city's actions upon the ongoing labor dispute, we must consider whether the National Labor Relations Act, as amended, 29 U.S.C. §§ 151-169, preempted the City's power to deny Yellow Cab's application for renewal of its franchise. Federal labor legislation seeks to strike a balance between the power of labor and management by protecting certain activities, *see* 29 U.S.C. § 157, prohibiting certain practices, *see id.* § 158, and leaving other conduct "unregulated because left 'to be controlled by the free play of economic forces.'" *Lodge 76, International Ass'n of Machinists & Aerospace Workers v. Wisconsin Employment Relations Comm'n*,

427 U.S. 132, 140, 96 S.Ct. 2548, 2553, 49 L.Ed.2d 396 (1976) (*quoting NLRB v. Nash-Finch Co.*, 404 U.S. 138, 144, 92 S.Ct. 373, 377, 30 L.Ed.2d 328 (1971)); *accord, New York Telephone Co. v. New York State Dep't of Labor*, 440 U.S. 519, 531, 99 S.Ct. 1328, 1336, 59 L.Ed.2d 553 (1979) (plurality opinion); *Local 20, Teamsters, Chauffeurs & Helpers Union v. Morton*, 377 U.S. 252, 259-60, 84 S.Ct. 1253, 1258, 12 L.Ed.2d 280 (1964). Yellow Cab contends that the actions of the City fall within the last of these three categories and therefore are preempted by federal law. The Supreme Court, however, has clearly stated that where interests "deeply rooted in local feeling and responsibility" are affected, we may not lightly infer that Congress intended to deprive state and local governments of the power to act. *San Diego Building Trades Council v. Garmon*, 359 U.S. 236, 244, 79 S.Ct. 773, 779, 3 L.Ed.2d 775 (1959), *quoted with approval in Lodge 76*, 427 U.S. at 136, 96 S.Ct. at 2551. In such an instance, a finding of preemption must rest upon "compelling congressional direction." *San Diego Building Trades Council*, 359 U.S. at 244, 79 S.Ct. at 779.

The use of streets and highways is a "traditionally local matter" left to state and local regulation under the police power. *Allen-Bradley Local No. 1111 v. Wisconsin Employment Relations Board*, 315 U.S. 740, 749, 62 S.Ct. 820, 825, 86 L.Ed. 1154 (1942), *quoted in Lodge 76*, 427 U.S. at 136 n.2, 96 S.Ct. at 2551 n.2. Yellow Cab has not brought to our attention nor have we found a "compelling congressional direction" to deprive a local government of the power to deny a franchise renewal to a franchisee involved in a labor dispute. We therefore conclude that Yellow Cab has little chance of prevailing on the merits of the preemption question. *See Benda*, 584 F.2d at 315.

Due Process

The City contends that Yellow Cab has no constitutionally protected property interests in a franchise re-

newal and, therefore, denial of Yellow Cab's application for a franchise renewal did not deprive Yellow Cab of procedural due process. We agree.

The requirements of procedural due process apply only to deprivations of a constitutionally protected liberty or property interest. *Board of Regents v. Roth*, 408 U.S. 564, 569, 92 S.Ct. 2701, 2705, 33 L.Ed.2d 548 (1972). "A property interest in a benefit protected by the due process clause results from a legitimate claim of entitlement created and defined by an independent source, such as state or federal law." *Russell v. Landrieu*, 621 F.2d 1037, 1040 (9th Cir. 1980). Yellow Cab has failed to bring to our attention any state law or city ordinance that creates an expectation of entitlement to a franchise renewal. The relevant provision of the Los Angeles City Charter provides in part: "The City *may*, by ordinance, . . . grant to the holder of such franchise a new franchise to replace such franchise about to expire." Los Angeles City Charter, § 3, subdiv. 8(D); Excerpt of Record at 4 (emphasis added). The wording of the statute is permissive, not mandatory, thus conferring on the City discretion to deny franchises to applicants even if they meet any established eligibility requirements. *See Erdelyi v. O'Brien*, 680 F.2d 61, 63 (9th Cir. 1982); *Jacobson v. Hannifin*, 627 F.2d 177, 180 (9th Cir. 1980). Moreover, Yellow Cab has not referred us to a set of standards definding eligibility for renewal. *Cf. Board of Regents v. Roth*, 408 U.S. at 566-67, 92 S.Ct. at 2703 (absent statutory or administrative standards defining eligibility for reemployment, decision whether to rehire a nontenured teacher is left to unfettered discretion of state university officials). Yellow Cab does not assert that the terms of the original franchise secure a property interest in renewal. Nor has Yellow Cab alleged the existence of rules and understandings promulgated and fostered by city officials that might justify a legal entitlement. *See Perry v. Sindermann*, 408 U.S. 593, 602-03, 92 S.Ct. 2694,

2700, 33 L.Ed.2d 570 (1972) (policies and practices may establish legitimate claim of entitlement). The recommendation by various city committees that Yellow Cab's franchise be renewed does not rise to the level of a de facto guarantee of renewal equivalent to the de facto tenure system alleged in *Perry v. Sindermann*. At most, Yellow Cab had only a unilateral hope for renewal. *Geriatrics, Inc. v. Harris*, 640 F.2d 262 (10th Cir. 1981), *cert. denied*, 454 U.S. 832, 102 S.Ct. 129, 70 L.Ed.2d 109. Nor is the interest asserted by Yellow Cab so fundamental as to warrant protection aside from state and local law or practice. *See Jacobson v. Hannifin*, 627 F.2d at 180.

In sum, Yellow Cab has failed to raise a serious question with respect to the threshold issue in a procedural due process claim—whether the claimant has a constitutionally protected liberty or property interest.

Equal Protection

The City next argues that its actions did not violate the Equal Protection Clause because they furthered legitimate governmental interests, namely provision of quality taxicab service and adequate compensation for taxicab drivers. Yellow Cab asserts that the sole purpose behind the differential treatment of Yellow Cab vis-a-vis the other applicants was the City's desire to coerce Yellow Cab into yielding to union demands. We conclude that Yellow Cab does not have a fair chance of demonstrating that the alleged classification is not rationally related to a legitimate governmental purpose.

In reviewing a state statute or local ordinance under the Equal Protection Clause, courts generally presume that the legislative act is valid. *Parham v. Hughes*, 441 U.S. 347, 351, 99 S.Ct. 1742, 1745, 60 L.Ed.2d 269 (1979). Where neither a fundamental right nor a suspect class is implicated, legislative classifications are constitutional if

they bear some rational relationship to a permissible governmental objective. *Id.*; *Holloway v. Arthur Andersen & Co.*, 566 F.2d 659, 663 (9th Cir. 1977). The burden is on the party challenging the legislative judgment to convince the court that there is no set of facts that may reasonably be conceived to justify the classification. *Vance v. Bradley*, 440 U.S. 93, 111, 99 S.Ct. 939, 949, 59 L.Ed.2d 171 (1979); *Lamb v. Scripps College*, 627 F.2d 1015, 1021 & n.9 (9th Cir. 1980).

The City, in acting on the 12 applications for franchise renewals created a classification that differentiated between the one applicant engaged in a collective bargaining dispute and the remaining applicants not involved in such a dispute. Even assuming that the members of the council were motivated at least in part by an impermissible purpose, that classification still survives judicial scrutiny. It is well settled that a reviewing court "will not strike down an otherwise constitutional statute on the basis of an allegedly illicit legislative motive." *United States v. O'Brien*, 391 U.S. 367, 383, 88 S.Ct. 1673, 1682, 20 L.Ed.2d 672 (1968); *accord*, *Kalish v. United States*, 411 F.2d 606, 607 (9th Cir.), *cert. denied*, 396 U.S. 835, 90 S.Ct. 93, 24 L.Ed.2d 86 (1969). The classification is valid if some legitimate state interest is advanced. The reviewing court need not and should not ascertain whether the particular governmental interest was the primary legislative purpose. *McGinnis v. Royster*, 410 U.S. 263, 276-77, 93 S.Ct. 1055, 1062, 35 L.Ed.2d 282 (1973). The City has advanced as the permissible governmental purposes behind its actions both the provision of quality taxicab service and the assurance of adequate compensation for taxicab drivers. Although these interests were not asserted until after the differential treatment of Yellow Cab had commenced, the "courts may properly look beyond the articulated state interest at the time of enactment in testing a statute under the rational basis test." *Lamb v. Scripps College*, 627 F.2d at 1021 n.9.

We conclude that Yellow Cab has not met, and has little chance of meeting, its burden of establishing that no set of facts may reasonably be conceived to justify the classification. *See Vance v. Bradley*, 440 U.S. at 111, 99 S.Ct. at 949; *Lamb v. Scripps College*, 627 F.2d at 1021 & n.9. The City could have rationally determined that denying Yellow Cab's application for renewal of its franchise would cause or contribute to higher levels of taxicab service and increased compensation for taxicab drivers.

The district court's grant of a preliminary injunction is vacated.

UNITED STATES DISTRICT COURT
C. D. CALIFORNIA

No. CV 81-1519

GOLDEN STATE TRANSIT CORP.,
Plaintiff,

v.

CITY OF LOS ANGELES,
Defendant.

Aug. 17, 1981

John B. Rice and Michael R. Mitchell, Woodland Hills, Cal., for plaintiff.

Burt Pines, City Atty., Thomas C. Bonaventura, Senior Asst. City Atty. by John F. Haggerty, Asst. City Atty., Los Angeles, Cal., for defendant.

DECISION GRANTING PRELIMINARY INJUNCTION

HAUK, Chief Judge.

On March 23, 1981, by a vote of 11 to 1, the Los Angeles City Council voted in effect to allow the ordinance which permitted the plaintiff Golden State Transit Corporation, doing business as Yellow Cab of Los Angeles ("Yellow Cab"), to operate its taxicab franchise within the City limits to expire on midnight March 31, 1981. At the time of this vote Yellow Cab was embroiled in a labor dispute with its Teamster drivers and it is claimed by the plaintiff, Yellow Cab, that the City Council voted as it did in order to exert pressure on the plaintiff to settle

its labor dispute. Yellow Cab charges that defendant City's refusal to pass an ordinance extending its franchise constitutes: 1) an unlawful interference with a labor dispute governed by federal law, a violation of the Federal Supremacy Clause; 2) a violation of the Due Process Clause; and 3) a violation of the Equal Protection Clause. Yellow Cab, therefore, seeks a preliminary injunction enjoining the City from refusing to extend its franchise.

FACTUAL BACKGROUND:

In 1977, plaintiff purchased the assets and trade name of the then defunct "old" Yellow Cab Co., and under the terms of this transaction, plaintiff was assigned the existing Yellow Cab franchise due to expire on October 29, 1980. The City Council approved this transfer on June 22, 1977.

Yellow Cab applied for a renewal of this franchise on March 30, 1980. Some twelve (12) other franchise taxicab companies also applied for renewals at the same time, inasmuch as all the City's taxicab franchises were due to expire on the same date. All of the twelve existing franchises were temporarily extended by the City Council to March 31, 1981, in order to allow an evaluation of the City's overall taxicab situation by the City Department of Transportation for recommendation to the City's Board of Transportation Commissioners.

Meanwhile, plaintiff's collective bargaining agreement with its Teamster drivers expired in October of 1980. During negotiations for a new agreement, interim agreements were adopted and plaintiff continued to operate. The labor dispute has been subject to mediation efforts, but as of this date, Yellow Cab and its Teamster drivers have been unable to agree on the provisions of a new labor contract.

On January 16, 1981, the Department of Transportation recommended to the Board of Transportation Com-

missioners that the existing franchises of only six (6) taxicab companies *including Yellow Cab*, be renewed for a four year term. The Department reported to the Board that all six companies, *including Yellow Cab*, were in full compliance with all the City's terms and conditions for renewal.

On January 26, 1981, the City Board of Transportation Commissioners recommended to the City Council's Transportation and Traffic Committee that long term renewals be granted to the Yellow Cab and the five (5) other franchises. The matter of the renewal franchises was scheduled for action by the full City Council on February 11, 1981. On that same date Yellow Cab's drivers went out and remain on strike.

Prior to the February 11 meeting, the Joint Council of Teamsters sent letters to the Mayor and all City Council members advising them of the labor dispute. A Teamster representative appeared at the February 11, City Council meeting and recommended that Yellow Cab not receive a renewal of its franchise because of the labor dispute. The City Council granted 4-year renewals to the other five franchises and postponed consideration of the Yellow Cab franchise to February 17.

At the February 17 meeting, the City Council after hearing from representatives of the Teamsters and of Yellow Cab, granted a franchise extension only until April 30, 1981, provided that the City Council found before March 27, 1981, that the 30-day extension ordinance was "in the best interests" of the City. No other franchise grant was subject to such a condition.

On March 23, 1981, the City Council met to consider whether it was in the "best interests" of the City to allow Yellow Cab the 30-day extension. Representatives of the Teamsters and the AFL-CIO detailed the facts underlying the labor dispute with Yellow Cab, alleging that plaintiff had failed to bargain in good faith, and asked that the extension be denied. Yellow Cab urged the Council to grant the extension to avoid intervening in the labor dispute.

At the meeting, the President of the Council stated that "it will be very difficult to get this ordinance passed to extend this franchise if the labor dispute is not settled by the end of the week . . ." The Council then voted to defeat a motion which recommended that the Council find that it would be in the best interests of the City to extend the franchise, thus allowing Yellow Cab's franchise to expire on March 31, 1981. It is undisputed that the sole basis for refusing to extend plaintiff's franchise was its labor dispute with its Teamster drivers.

Yellow Cab then filed this action for declaratory and injunctive relief, and on March 30, 1981, this Court granted plaintiff's application for a temporary restraining order preserving its status as a franchised taxicab operator up to and including April 13, 1981, the date of the hearing of the instant motion for a preliminary injunction.

FACTORS TO BE CONSIDERED IN GRANTING A PRELIMINARY INJUNCTION

The standards for determining whether a preliminary injunction should be granted have found expression in this Circuit in the form of alternative tests.

> "One moving for a preliminary injunction assumes the burden of demonstrating *either* a combination of probable success and the possibility of irreparable injury *or* that serious questions are raised and the balance of hardships tips sharply in his favor." *Wm. Inglis & Sons Baking Co. v. ITT Continental Baking Co.*, 526 F.2d 86, 88 (9th Cir. 1975). (emphasis added).

The relationship between these two tests was explained in *Benda v. Grand Lodge of the International Association of Machinists & Aerospace Workers*, 584 F.2d 308 (9th Cir. 1978), as follows:

"Recent cases have made it clear . . . that there are not really two entirely separate tests, but that they are merely extremes of a single continuum. *Fox Valley Harvestore v. A. O. Harvestore Products, Inc.*, 545 F.2d 1096 (7th Cir. 1976). The critical element in determining the test to be applied is the relative hardship to the parties. *If the balance of harm tips decidedly toward the plaintiff, then the plaintiff need not show as robust a likelihood of success on the merits as when the balance tips less decidedly. Aguirre v. Chula Vista Sanitary Service*, 542 F.2d 779 (9th Cir. 1976). No chance of success at all, however, will not suffice." *Benda v. Grand Lodge, etc.* supra, at 315. (emphasis added).

In balancing the hardships in the present case, there can be no question but that the scales tip overwhelmingly toward Yellow Cab. The City can show no hardship whatsoever from the granting of an injunction, while the harm that would come to Yellow Cab from the denial of injunctive relief would be both substantial and irreparable —it would be forced out of business. Such being the case, the degree to which plaintiff must establish the likelihood of success on merits is significantly reduced, especially since there is no doubt that the denial of the Yellow Cab franchise presents serious questions of public policy.

PREEMPTION—SUPREMACY CLAUSE:

It is undisputed that defendant City Council's refusal to renew plaintiff's taxicab franchise was based solely on the grounds that plaintiff's union drivers were on strike. Plaintiff urges that the City Council's actions in this regard are an unlawful state interference in a labor dispute within the exclusive jurisdiction of the National Labor Relations Board constituting a violation of the Supremacy Clause, U.S. Const., art. 6 § 2.

In *Lodge 76, International Association of Machinist and Aerospace Workers, AFL-CIO, et al., v. Wisconsin*

Employment Relations Commission, et al., 427 U.S. 132, 96 S.Ct. 2548, 49 L.Ed.2d 396 (1976), the Supreme Court discusses at length the extent to which federal labor policy preempts the authority of state and local government entities to act in matters affecting labor disputes.

The facts of *Lodge 76* are simple enough: During negotiations between Union and Company for a new collective bargaining agreement, Union employees refused to work any overtime. Company filed a charge with the N.L.R.B. stating that this refusal constituted an unfair labor practice in violation of § 8(b)(3) of the N.L.R.A. [29 U.S.C. § 158(b)(3)]. The Regional Director dismissed the charge, ruling that the action did not violate the Act. The company also filed a complaint with the Wisconsin Employment Relations Commission, and that state body found that the refusal to work overtime was an unfair labor practice under *state* law. The Wisconsin Supreme Court affirmed the Commission's ruling. In reversing the Wisconsin Supreme Court, the United States Supreme Court held that "the Union's refusal to work overtime is peaceful conduct constituting activity which must be free of regulation by the States if the congressional intent in enacting the comprehensive federal law of labor relations is not to be frustrated . . . ." *Lodge 76*, 427 U.S., at 155, 96 S.Ct. at 2560. In enacting the N.L.R.A., Congress provided legal framework for the conduct of labor disputes between employers and union organizations. Within this framework, Congress struck a balance between the economic "weapons" which were to be sanctioned for use in the bargaining arsenals of the parties to labor disputes.[1] The Supreme Court has long recognized Congress' intent that unregulated conduct be "left to . . . the free play of economic forces" *N.L.R.B.*

[1] See generally Cox, Labor Law Preemption Revisited, 85 Harv. L. Rev. 1337 (1972); Lesnick, Preemption Reconsidered: the Apparent Reaffirmation of *Garmon*, 72 Col. L. Rev. 469 (1972).

v. Nash-Finch Co., 404 U.S. 138, 144, 92 S.Ct. 373, 377, 30 L.Ed.2d 328 (1971), and state action which deprives a party of a sanctioned weapon in such an economic contact as a labor dispute has consistently been found to be a violation of the Supremacy Clause of the Federal Constitution.

The most fundamental weapon in an employer's arsenal is its right to rely on its economic strength, in the form of weathering a strike, when there is a bargaining impasse. *Beasley v. Food Fair of North Carolina*, 416 U.S. 653, 94 S.Ct. 2023, 40 L.Ed.2d 443 (1974); *American Ship Bldg. Co. v. N.L.R.B.*, 380 U.S. 300, 85 S.Ct. 955, 13 L.Ed.2d 855 (1965). By threatening to allow Yellow Cab's franchise to terminate unless it entered into a collective bargaining agreement with the Teamsters, the City Council effectively denied Yellow Cab of its most basic weapon the economic strength of an on-going franchise. Since Congress has sanctioned the self-help measures taken by Yellow Cab here in resisting the signing of a new contract with the Union, the City Council is precluded by the Supremacy Clause from taking legislative action which would frustrate the purposes of the N.L.R.A. The City Council's action in refusing to renew Yellow Cab's franchise thus having been preempted by federal labor law, injunctive relief must issue.

In light of the fact that plaintiff has more than met the "serious question" requirement for the issuance of a preliminary injunction on "preemption" grounds alone, this Court need not now consider the merits of plaintiff's arguments that the City Council's actions were violative of the Equal Protection and Due Process Clauses of the United States Constitution.

Accordingly, the preliminary injunction sought by plaintiff Yellow Cab against defendant City is issued.

UNITED STATES CONSTITUTION
ARTICLE VI, CLAUSE 2

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treatises made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

NATIONAL LABOR RELATIONS ACT, SECTION 8(d), AS AMENDED, 29 U.S.C. § 158(d)

(d) For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession . . . .

OPPOSITION

BRIEF

No. 85-1644

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1984

GOLDEN STATE TRANSIT CORPORATION,

Petitioner,

vs.

CITY OF LOS ANGELES,

Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

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No. 85-1644

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1984

GOLDEN STATE TRANSIT CORPORATION,

Petitioner

v.

CITY OF LOS ANGELES,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION

The respondent, City of Los Angeles, respectfully requests that this court deny the petition for writ of certiorari, seeking review of the Ninth Circuit's opinion in the case, reported in 754 Fed.2d 830 (1985).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The City contends that the Supremacy Clause of the United States

Constitution and the National Labor Relations Act, cited by petitioner, are not applicable and are only involved since petitioner has alleged such and cited them.

STATEMENT OF THE CASE

Background and Facts

The petitioner attempts to bring this case within the parameters of the National Labor Relations Act. That attempt, however, is without merit.

Petitioner held a taxicab franchise which expired by its own terms March 31, 1981. (CR 11, Exhibit C.) Petitioner applied to the City Council for a new franchise to replace this franchise which was about to expire. The City Council, after a hearing on March 23,

1981, rejected, by a vote of 11 to 1, a motion that it was in the public interest to extend petitioner's franchise to April 30, 1981. (CR 4, Exhibit 15, p. 11). The defeat of this motion resulted in petitioner's franchise terminating on March 31, 1981 (CR 11, Exhibit 15, P. 34; CR2, Exhibit 11).

Petitioner attempts to characterize the City Council's action as an intervention in a labor dispute. To the contrary, the record shows that the Council's action was one of neutrality, based on a proper exercise of the City's regulatory powers.

Petitioner's drivers, represented by the Teamsters, had gone on strike on February 11, 1981 (CR 16, p. 2). During

the course of the Council discussion, only three Councilmembers made any statement that could be interpreted as a reluctance on their part to grant the renewal franchise as long as a strike was in progress. The transcript of the proceedings indicates that during the course of the hearing the president of one of the taxi drivers associations stated that the non-operation of petitioner's cabs enabled other taxi drivers to make, for the first time, a decent minimal living. He further stated that the doormen of the major hotels had reported to him that they were getting a better quality of service with the non-operation of petitioner's cab. (CR4, Exhibit 15, page 6). The general manager of the

City's Department of Transportation, the Department which administers the regulation of taxicabs on behalf of the City, testified at the Council hearing that the department had not received any complaints reflecting a lack of service since the non-operation of petitioner's cabs (CR 4, Exhibit 15, p. 14-15) The general manager further testified that prior to the strike by petitioner's drivers, there were too many taxicabs operating in the City. (Page 15). The vote on the motion was taken at the close of the hearing (p. 34). The defeated motion made no reference in any way to the strike.

Judge William Norris, in his concurring opinion, pointed out that the

petitioner had cited no evidence that gave rise to a triable issue of fact with respect to its contentions (1) that the City's purpose in refusing to renew the franchise was to assist the Teamsters in their labor dispute with the petitioner, and (2) that the effect of the City's refusal to renew the franchise was to destroy petitioner's economic ability to resist the strike.

That some Councilmembers may have made reference to the strike in the Council discussion does not substantiate a conclusion that the Council's vote constituted an action by the City to intervene in a labor dispute in order to benefit the striking drivers. It was pointed out by one of the Councilmembers

during the hearing that a result of not granting a renewal franchise would be to put the drivers out of work.

Councilman Ernani Bernardi stated at the hearing:

> "Let me say this, we've been, we've [sic] being accused and we will be accused [sic] I guess from every angle. [sic] If we continue this for another 30 days [sic] we will be accused of being on the side of the [sic] owner of Yellow Cab [sic] (Petitioner, Golden State Transit, operated under the name of Yellow Cab). If we refuse to continue [sic] then we are accused of being on the

side of the cab drivers. I don't know how having them (the drivers) stay out of work would be on their side, they are going to be out of a job. But [sic] I think this is really a position we've got to take and [sic] would be to remain neutral." (CR 4, Exhibit 15, p. 30)

Mr. Bernardi went on to say:

"[Sic] I'm going to remain neutral so I'm going to have to vote against Mrs. Russell's extension". (p. 31).

Proceedings Below

Petitioner asserts, in ftn. 5 of its petition, that because of the City's

1983 cease and desist order prohibiting petitioner from operating its taxicabs, petitioner was forced to cease doing business in Los Angeles and "consequently was driven into bankruptcy". This assertion is not accurate.

As a result of the granting of the preliminary injunction by the District Court (520 Fed.Supp. 191), subsequently vacated by the Court of Appeals (686 Fed.2d 758), petitioner was able to continue to operate until 1983 even though the franchise expired March 31, 1981. The record, however, in the bankruptcy proceeding in the Bankruptcy Court, Central District, California, Case No. 81-01812-JD, indicates that it was commenced February 18, 1981, as an

involuntary bankruptcy by an attorney who allegedly had money owing to him by the petitioner, and then, on August 11, 1981, the bankruptcy court, on the application of petitioner, converted the action into a Chapter 11 proceeding.

REASONS FOR DENYING THE WRIT

The Decision in the Court of Appeals does not Conflict with the Decisions of this Court Regarding the Prohibition Against a Local Government's Interference in a Labor Dispute

This lawsuit raises no question of Federal law. The decision below turns solely on the unique facts involved in this dispute.

The City grants franchises

pursuant to the Los Angeles City Charter, Section 3, Subdivision 8(D). The relevant provision of the section provides, in part:

> "The City may, by ordinance, . . . grant to the holder of such franchise a new franchise to replace such franchise about to expire."
> (emphasis added)

As the Court of Appeals in an earlier decision in this matter, 686 Fed.2d 758 (1982), stated, in reference to this language:

> "The wording of the statute is permissive, not mandatory, thus confering on the City discretion to deny franchises

> to applicants even if they meet any established eligibility requirements."
> (Petition, Page 22A.)

The regulation of taxicabs is an exercise of the police power. In Re Martinez, 22 Cal.2d 259, 262(2), 18 P.2d 10 (1943).

Petitioner, in stating what it contends is the question for review, makes reference to the petitioner having a right to continue to do business. However, petitioner had no vested or constitutional right to use a public street for conducting private business. O'Connor v. Superior Court, 90 Cal.App.3d 107, 114(4); 153 Cal.Rptr. 306 (1979) (a case involving taxicab regulation). The use of the

streets for the operation of taxicabs is a privilege and the rendering of a public service. Luxor Cab Co. v. Cahill, 21. Cal.App.3d 551, 558(7); 98 Cal.Rptr. 576 (1971).

Petitioner argues, citing Brown v. Hotel and Restaurant Employee's and Bartenders Int'l Union Local 54, ____ U.S. _____, 104 S. Ct. 3179, that when "state law regulates conduct that is actually protected by federal law . . . . pre-emption follows not as a matter of protecting primary jurisdiction, but as a matter of substantive right."

The City, however, was not regulating conduct protected by federal law. It was acting on petitioner's application to the City for use of the

City streets to provide a public service which they weren't then providing because of a strike. The Court of Appeals decision concluded it was within the City's powers to insist upon the resolution of the dispute as a condition to a franchise renewal.

The City was not, as the Court of Appeals recognized, attempting to dictate terms of a collective bargaining agreement or to alter the substantive outcome of a labor dispute. The cases relied upon by the petitioner are distinguishable on their facts. There is no conflict in the decision of the Court of Appeals and cases cited by petitioner.

CONCLUSION

There is no serious question

raised by the petition. The City's refusal to grant the franchise was an appropriate exercise of its powers and did not raise a pre-emption issue under the National Labor Relations Act. The Court of Appeals decision in this case turns upon the particular facts involved and would appear to affect few others than the litigants in this case. For the reasons stated, the petition for writ of certiorari should be denied.

DATED: MAY 16, 1985

Respectfully submitted,

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REPLY BRIEF

No. 85-1644

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

GOLDEN STATE TRANSIT CORPORATION,
Petitioner,

v.

CITY OF LOS ANGELES,
Respondent,

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

---

REPLY BRIEF OF PETITIONER

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REPLY BRIEF OF PETITIONER

In its Brief in Opposition, the City of Los Angeles has suggested that this petition is unworthy of the Court's attention because it raises a factual rather than a legal issue. That assertion is plainly untrue, as the opinion below itself makes clear. Even as it affirmed the grant of summary judgment *for* the City, the majority below recognized that the City's decision not to renew Golden State Transit Corporation's franchise altered the balance of power in the labor dispute, 754 F.2d at 832, n.1, App. 4a, a finding of fact that had also been affirmed by an earlier Ninth Circuit panel that had considered the pro-

priety of the preliminary injunction. *See* 686 F.2d at 759. The Court of Appeals nonetheless expressly held that the City of Los Angeles had the right to condition Golden State's franchise renewal upon resolution of its labor dispute, a conclusion repeated by the City itself in its Brief in Opposition: "[t]he Court of Appeals decision concluded it was within the City's powers to insist upon the resolution of the dispute as a condition to a franchise renewal." Brief in Opposition at 14.

It is the correctness of this conclusion—that the City had the authority, in light of federal labor law, to insist that Golden State either settle the labor dispute or face legislated extinction—that Golden State presents by this petition. The majority below expressly found that the City "insisted upon resolution of the [labor] dispute as a condition to franchise renewal," 754 F.2d at 833, App. 8a, and decided the case on that basis. The City's argument that no such finding was either made or warranted is, at best, disingenuous.[1]

Respondent also seeks to import a "right/privilege" distinction into the preemption analysis, arguing that the City's conduct was permissible because operation of taxis on city streets is a "privilege" and not a "right." This theory was not relied upon by the court below, and the absence of supporting citation in Respondent's brief illustrates that no other court has found it useful or appropriate to the preemption analysis. Whether the right to engage in a business for profit is a "right" or a "privilege" under local law does not address the central issue

[1] This is particularly true in light of Judge Norris's concurrence, in which he tacitly condemns the majority's preemption analysis, 754 F.2d at 834, n.1, App. 10a, but concludes that Golden State did not present sufficient evidence to establish a triable issue of fact. *Id.* The majority below obviously was unwilling to follow Judge Norris's lead, and thus resolved this case on a legal rather than a factual basis.

in this case: could the City condition Golden State's franchise, and thus its continued existence, upon immediate surrender to the demands of the Teamsters union. Reliance upon the "right/privilege" dichotomy in this context amounts to nothing more than a claim that the City's action is completely beyond judicial scrutiny, no matter what impact that action has upon federal law or policy. In short, nothing in Respondent's Opposition suggests that this is not an appropriate case for review of the difficult issue presented.

Since this petition was filed, the Court has noted probable jurisdiction in *Gould v. Wisconsin Department of Industry, Labor and Human Relations*, No. 84-1484, 53 U.S.L.W. 3824 (May 20, 1985). This Court's resolution of the *Gould* case would be unlikely to affect any decision in this case because the cases present two different issues arising out of the two distinct branches of labor preemption jurisprudence. Nevertheless, both cases concern the conflict between federal labor law and local sanctions imposed as a consequence of the manner in which an employer conducts its labor relations.

Gould presents an issue arising under the "primary jurisdiction" branch of federal labor law preemption. It involves a state scheme whereby the state, acting as a purchaser of goods and services, has refused to deal with repeat violators of federal labor laws. After distinguishing cases focusing on a possible proprietary exception to the primary jurisdiction doctrine, the Seventh Circuit found the state scheme preempted because it imposed an additional remedy over and above those imposed by federal law.

The instant petition questions whether a municipality acting as regulator, not a proprietor, can take action based upon an employer's stance in a labor dispute that contravenes rather than supplements federal labor law. In this case, unlike *Gould*, the City imposed a sanction upon Golden State not for violating federal law, but for

refusing to surrender rights guaranteed thereunder. This case falls within the "protected activities," rather than the primary jurisdiction branch of the Court's labor preemption jurisprudence. Unless this Court grants this petition, the principle will effectively be established that a state or city, when acting as a regulator, can insist that an employer resolve a labor dispute or be forced out of business, in contravention of the essential foundation of federal labor law and policy—voluntary agreement and the right to resist the other side's demands.[2]

The decisions of this Court have repeatedly made clear that the primary jurisdiction and protected activities branches of federal labor law preemption are fully independent of one another, and that rights guaranteed by federal labor law are not subject to state interference, regardless of the strength of the state's interests. *See Brown v. Hotel & Restaurant Employees*, —— U.S. ——, 104 S. Ct. 3179 (1984); *Allis-Chalmers Corp. v. Lueck*, —— U.S. ——, 53 U.S.L.W. 4463, at 4466, n.9 (April 16, 1985). But despite the Court's continued admonitions, the courts below have continued to confuse and conflate the two doctrines. Both here—where first "local interest" and now "peripheral concern" have improperly been relied upon to justify local interference with the federal scheme—and in *Gould*, 750 F.2d 611, at n.3, the lower courts have assumed that both branches of the preemption doctrine at bottom simply require a balancing of federal and state interests. The multiple opinions in *New York Telephone Co. v. New York State Department of Labor*, 440 U.S. 519 (1979), the Court's last attempt to deal with the protected activities branch of the preemption doctrine, appears to have exacerbated this confusion.

The petition for certiorari raises an important issue of federal law, requiring the Court's attention. Golden

[2] *Gould* also involved a far less egregious punishment—temporary loss of eligibility for government contracts—than that invloved here.

State asks that the petition be granted and respectfully suggests that it may be appropriate to set this case for argument in tandem with *Gould* in order to best illuminate the preemption issues that are raised by each of the cases.

Respectfully submitted,

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JOINT

APPENDIX

(5)

No. 84-1644

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

GOLDEN STATE TRANSIT CORPORATION,
Petitioner,

v.

CITY OF LOS ANGELES,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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JOINT APPENDIX

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CERTIORARI GRANTED JUNE 17, 1985

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

No. 81-1519

GOLDEN STATE TRANSIT CORPORATION

v.

CITY OF LOS ANGELES

RELEVANT DOCKET ENTRIES

1. Complaint filed March 30, 1981.

2. Declaration of John Rice in Support of Application for Temporary Restraining Order, with Exhibits, filed March 30, 1981.

3. Declaration of Eugene Maday in Support of Application for Temporary Restraining Order, with Exhibits, filed March 30, 1981.

4. Temporary Restraining Order, with supporting findings of fact and conclusions of law, entered following hearing, March 30, 1981.

5. Preliminary Injunction with supporting findings of fact and conclusions of law, entered following hearing, on April 13, 1981.

6. Defendant's Answer to Complaint, filed April 20, 1981.

7. Defendant's Notice of Appeal of Preliminary Injunction, filed April 29, 1981.

8. Entry of written opinion of Judge A. Hauk, granting preliminary injunction (reported at 520 F. Supp. 191 (C.D. Cal. 1981)), entered August 18, 1981.

9. Second Amended Complaint, raising antitrust claims, filed March 28, 1983.

10. Defendant's Answer to Second Amended Complaint, filed April 15, 1983.

11. Entry of Order granting Partial Summary Judgment on antitrust claims, with supporting findings of fact and conclusions of law (reported at 563 F. Supp. 169 (C.D. Cal. 1983)), entered May 3, 1983.

12. Plaintiff's Notice of Appeal from Partial Summary Judgment, filed May 16, 1983.

13. Entry of Order granting Partial Summary Judgment on all other claims, with supporting findings of fact and conclusions of law, entered October 21, 1983.

14. Plaintiff's Notice of Appeal of Order granting Partial Summary Judgment on all remaining issues, filed November 16, 1983.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 81-5369
No. 83-5903
No. 83-6441

GOLDEN STATE TRANSIT CORPORATION

v.

CITY OF LOS ANGELES

RELEVANT DOCKET ENTRIES

1. Decision of United States Court of Appeals for the Ninth Circuit, vacating preliminary injunction (reported at 686 F.2d 758 (9th Cir. 1982)), entered September 7, 1982. (No. 81-5369)

2. Denial of Petition for a Writ of Certiorari by the United States Supreme Court (reported at 459 U.S. 1105 (1983)), entered January 10, 1983. (No. 81-5369)

3. Decision of United States Court of Appeals for the Ninth Circuit, upholding district court grant of summary judgment on antitrust claims (reported at 726 F.2d 1430 (9th Cir. 1984)), entered February 28, 1984. (No. 83-5903)

4. Decision of United States Court of Appeals for the Ninth Circuit, denying Petition for Rehearing and Suggestion for Rehearing En Banc, entered May 14, 1984. (No. 83-5903)

5. Plaintiff's Petition for a Writ of Certiorari on antitrust issues, filed September 10, 1984 (Supreme Court No. 84-378). (No. 83-5903)

6. Decision of United States Court of Appeals for the Ninth Circuit, upholding district court grant of summary judgment on labor and other constitutional issues (reported at 754 F.2d 830 (9th Cir. 1985)), entered February 26, 1985. (No. 83-6441)

7. Denial of Petition for a Writ of Certiorari on antitrust issues entered by United States Supreme Court (reported at —— U.S. ——, 105 S. Ct. 1865), on April 1, 1985. (No. 83-5903)

8. Plaintiff's Petition for a Writ of Certiorari on labor preemption issues, filed April 19, 1985 (Supreme Court No. 84-1644). (No. 83-6441)

9. Order of United States Supreme Court, granting Plaintiff's Petition for a Writ of Certiorari (reported at 53 U.S.L.W. 3881), entered June 17, 1985. (No. 83-6441)

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

No. 81 1519 AAH (Gx)

GOLDEN STATE TRANSIT CORPORATION,
a California corporation, doing business as
Yellow Cab of Los Angeles,
Plaintiff,

v.

CITY OF LOS ANGELES, a municipal corporation,
Defendant.

COMPLAINT FOR TEMPORARY RESTRAINING ORDER, PRELIMINARY AND PERMANENT INJUNCTION, DECLARATORY RELIEF AND MONEY DAMAGES

Plaintiff, for its Complaint, states as follows:

JURISDICTION

1. This Court has jurisdiction of the first count of this action under 28 U.S.C. § 1331 in that it arises under the Constitution of the United States, Article VI, § 1, under the National Labor Relations Act, 29 U.S.C. §§ 151-68 et seq., under the Labor Management Relations Act, 29 U.S.C. §§ 141-67, 171-97. The amount in controversy, exclusive of interest and costs, exceeds the sum of $10,000.

2. This Court has jurisdiction of the second count of this action under 28 U.S.C. §§ 1331 and 1343 in that it arises Constitution of the United States, under the Civil Rights Act, 42 USC §§ 1983, 1985, 1986, and 28 U.S.C. § 2201, and the amount in controversy, exclusive of interest and costs, exceeds the sum of $10,000.

PARTIES

3. Plaintiff GOLDEN STATE TRANSIT CORPORATION, doing business as Yellow Cab of Los Angeles is a corporation organized and existing under and by virtue of the laws of the State of California, and doing business in and with its principal office in the City and County of Los Angeles. Plaintiff is the grantee of a Los Angeles City Franchise which permits it to operate a taxicab service in the city of Los Angeles.

4. Defendant City of Los Angeles is a chartered city organized and existing under the Constitution and laws of the State of California.

FACTS

5. In or about 1977, plaintiff's predecessor was affiliated with the Westgate-California group of companies and was in bankruptcy. The bankruptcy receiver was seeking a purchaser for the bankrupt's assets, including the Los Angeles City taxi franchise. At that time, the bankrupt was not operating pursuant to its franchise but did have a union contract. The bankrupt's drivers were organized through Teamster's Local No. 572 and represented by Joint Council of Teamsters No. 42.

6. On May 17, 1977, plaintiff paid the receiver approximately $550,000 for the assets, including the right to use the name "Yellow Cab of Los Angeles" and, subject to City Council approval, all rights under the existing franchise. Plaintiff was assured that getting the franchise renewed had always been automatic and that no Los Angeles taxicab franchise had failed to be renewed. Based upon that representation, plaintiff purchased said franchise and assets; since that time, plaintiff has caused over two million dollars to be invested in the operation of the franchise.

7. Upon obtaining the franchise, plaintiff operated pursuant to a collective bargaining agreement with its

Teamster drivers. The agreement expired in October, 1980. Plaintiff continued to operate pursuant to interim agreements with the Teamsters, but the parties continue to dispute regarding wages and benefits. This dispute has been and is subject to mediation by the Federal Mediation and Reconciliation Services. Plaintiff has been and continues to act in good faith to resolve the dispute. On February 11, 1981, plaintiff's drivers went on and remain on strike.

8. On March 31, 1980, plaintiff applied in a timely manner for renewal of its taxicab franchise, said renewal to take effect upon expiration of the existing franchise. The defendant's Department of Transportation stated in its report to the Board of Transportation Commissioners that plaintiff was in full compliance with all terms and conditions of its franchise.

9. Defendant's power to grant a taxicab franchise flows from the Los Angeles City Charter, § 3 Subdivision 8, Los Angeles Municipal Code § 71.12(b) and Los Angeles Administrative Code Division 13, Chapter 1, Articles 2 through 13, inclusive.

10. The specific procedure for granting and renewal of any franchise is established under ¶ A and ¶ D of Subdivision 8 of § 3 of the Los Angeles City Charter which provide in part that:

> (a) "The Council shall adopt an ordinance which shall establish the procedure . . . for granting a new franchise [to the holder of an existing franchise] for a period not exceeding ten years, to replace a franchise about to expire as authorized in Paragraph D of this subdivision . . . "
>
> (b) "The City may, by ordinance, adopted five years or less prior to the expiration of any franchise, grant to the holder of such franchise a new franchise to replace such franchise about to expire, such new franchise to run for a period not to exceed ten

years from the date of expiration of the franchise it replaces. All such franchises so granted shall be in accordance with the procedure ordinance at the time in force, and shall carry all the conditions required in the original franchise. . . "

11. By Ordinance Number 149,825, effective July 17, 1977, the Los Angeles City Council enacted an ordinance granting a taxicab service franchise to plaintiff, more particularly entitled, "An ordinance consenting to the assignment by Yellow Cab Company of California of the franchise [to Los Angeles Yellow Cab] granted by ordinance and amendments herein prescribed." Under the terms of said ordinance, plaintiffs's franchise was to expire on October 29, 1980. By Ordinance Numbers 154,409 and 154,713, the above ordinance was amended to extend the expiration period until March 31, 1981. Said franchise is now in full force and effect, but will terminate at midnight on March 31, 1981 as a result of defendant's actions as described more particularly herein.

12. Approval of plaintiff's franchise was recommended by the Board of Transportation Commissioners in its report to the Transportation and Traffic Committee of the City Council on September 4, 1980 and again on January 26, 1981. On November 19, 1980, the Transportation and Traffic Committee recommended to the full City Council that a five year renewal franchise be granted to plaintiff.

13. Of the other thirteen taxicab franchises within the City of Los Angeles, plaintiff was among the six recommended by the Department of Transportation for five year renewal; the six of the remaining seven franchises were recommended for approval for one year; one franchise was not recommended for approval.

14. The ordinance approving plaintiff's franchise as well as ordinances approving the other thirteen fran-

chises (including the franchise which had been disapproved by the Department of Transportation), were placed on the City Council calendar for February 11, 1981.

15. Plaintiff and the Teamsters have been unable to agree to a long-term labor contract. A short-term agreement was scheduled to and did expire at midnight February 10, 1981 on the eve of scheduled Council action.

16. On February 5, 1981, by letter to the Mayor and all Council members, the joint council of Teamsters informed the City Council that a labor dispute existed between plaintiff and the Teamsters; on information and belief, plaintiff alleges that a request was made by the teamsters to postpone the granting of a renewal franchise until a labor contract between the plaintiff and the teamsters was signed. In response to this request, the City Council declined to renew plaintiff's franchise on February 11, 1981, postponing consideration until February 17, 1981. All of the other franchises scheduled for granting were renewed on February 11, 1981.

17. Also, on February 11, 1981 the City Council adopted the Committee report and ordinance granting multi-year franchises to five of the enumerated companies. Plaintiff was deleted from the list of companies, and the ordinance pertaining to its multi-year franchise was continued for consideration to February 17, 1981. The Committee report stated that all six companies including plaintiff were in full compliance with all terms and conditions of the franchise. That Committee report was adopted.

18. On February 17, 1981 the City Council considered the question of the franchise for plaintiff. The multi-year ordinance which had been continued from February 11, 1981 was not presented to the City Council at that time. Instead, a substitute ordinance was presented which provided for an extension of the Golden

State franchise to April 30, 1981, provided, among other things, that the City Council was to find on or before March 27, 1981, that the 30-day extension ordinance was in the best interests of the City. This 30-day extension ordinance was supported by the Joint Council of Teamsters and the County Federation of Labor. The City Council minutes reflect that the spokesman for the Joint Council of Teamsters cited labor difficulties as the reason why it was necessary for such a short extension instead of a multi-year franchise.

19. On March 23, 1981, the City Council considered a motion made by the chairperson of the Transportation and Traffic Committee that the City Council adopt a finding that the 30 day extension of the plaintiff franchise was in the best interests of the City. At that time the extension was opposed by the Joint Council of Teamsters. The City Council declined to adopt the necessary finding, thereby preventing the 30-day extension ordinance from going into effect. The legal effect of the failure of the Council to adopt the finding is that the franchise of plaintiff will now expire on March 31, 1981. During the Council debate on the Motion, various Council members expressed the opinion that if plaintiff were to resolve its labor difficulties with the Teamsters, the finding would be made in time for the ordinance to take effect.

20. The Teamsters were determined to use the franchise extension proceedings as a lever to force Yellow Cab to accede to their demands; on March 22, 1981, Hugo Morris, the Teamster representative, stated to plaintiff, "We are going to see that your franchise is revoked or not renewed if you do not meet our demands." On March 23, 1981 Mr. Morris appeared before the City Council and urged the council not to renew or grant an extension to plaintiff's franchise.

21. The refusal of the City to grant plaintiff a four-year franchise when five other operators obtained fran-

chises under similar circumstances was arbitrary and capricious, was based solely upon political considerations and was designed to force plaintiff to accede to the union demands.

22. At no point in the franchise renewal proceedings was plaintiff notified that any evidentiary or fact-finding hearing would be held to determine whether the franchise should be renewed. Plaintiff was never offered an opportunity to present sworn testimony, to offer admissible evidence, or to cross-examine opposing parties under oath. The only factual findings adduced were that plaintiff was in full compliance with all the terms of its franchise.

FIRST CAUSE OF ACTION

(Violation of Supremacy Clause of the United States Constitution by Conflicting with the National Labor Relations Act, the Labor Management Relations Act—Declaratory and Injunctive Relief)

23. Plaintiff realleges paragraphs 1 through 22 hereof and incorporate the same herein as though set forth at length.

24. The foregoing action by defendant constitutes a violation of the Supremacy Clause, Article VI, § 1 of the United States Constitution by conflicting with the National Labor Relations Act, 29 U.S.C. §§ 158-68 et seq., and the Labor Management Relations Act, 29 U.S.C. §§ 141-67, 179-97, in that it is a wrongful and a discriminatory interference by defendant with the collective bargaining process between plaintiff and the Teamsters, by threatening to destroy plaintiff's business unless plaintiff accedes to union demands.

25. An actual controversy exists between plaintiff and defendant as to whether or not said action is in conflict with Federal law and whether or not said action violates the Supremacy Clause of the United States Constitution.

Plaintiff contends that the said action is unconstitutional. Defendant contends that the action is constitutional.

26. Plaintiff desires a declaration of its rights with respect to the constitutionality of said action and asks the Court to make a declaration of such rights, duties, and responsibilities, and to make a declaration as to the validity and constitutionality of said action. Such a declaration is necessary and appropriate at this time in order that plaintiff may proceed under the law. There are no administrative remedies available to plaintiffs that will guard against enforcement of said actions.

27. The illegal actions of defendant City of Los Angeles threaten to cause plaintiff irreparable injury, to wit, loss of franchise rights, destruction of ability to bargain or contract with the union drivers, loss of customers to competition, loss of over two million dollars invested in plaintiff's business. Plaintiff's franchise will terminate on March 31, 1981 unless defendant is enjoined from failing to take action to renew and/or extend said franchise. Once said franchise has terminated, the defendant city contends that it cannot be reinstated without a lengthy hearing on need and necessity as well as a competitive bidding scheme pursuant to defendant's municipal laws. There exists no adequate remedy at law or otherwise to protect plaintiff from the threatened irreparable injury.

28. Plaintiffs will suffer irreparable injury unless the injunctive relief prayed for is granted.

SECOND CAUSE OF ACTION

(Cause of Action for Damages for Violation of Civil Rights)

29. Plaintiff realleges paragraphs 1 through 28 hereof and incorporate the same herein as though set forth at length.

30. At all times herein mentioned Defendant was acting or pretending to act under color of one or more

statutes, regulations, ordinances, customs or usages of the State of California and the City of Los Angeles, and was carrying out the official policy, custom and practice of the city of Los Angeles.

31. Because of the above recited acts, plaintiff was subjected to the deprivation by Defendant City under color of law and of statutes, ordinances, regulations, customs and usages of the State of California and City of Los Angeles, of rights, privileges, and immunities secured to it by the Constitution and laws of the United States and particularly its right not to be deprived of property without due process of law to wit, the following property rights: its justifiable expectation of franchise renewal, its franchise, its ability to freely bargain with the union, and its business.

32. Because of the above recited acts, plaintiff was subjected to the deprivation by Defendant City under color of law and of statutes, ordinances, regulations, customs and usages of the State of California and City of Los Angeles, of rights, privileges, and immunities secured to it by the Constitution and laws of the United States and particularly its right to equal protection of the law in that other franchises were renewed and were granted to entities similarly situated with plaintiff, but defendant arbitrarily and capriciously refused to renew plaintiff's franchise. As a direct and proximate result of the foregoing, plaintiff was and will be damaged in its business in the sum of $10,000,000.

33. Plaintiffs have no adequate remedy at law since once its franchise is terminated, plaintiff will be faced with the loss of franchise rights, destruction of ability to bargain or contract with the union drivers, loss of customers to competition, loss of over two million dollars invested in plaintiff's business. Plaintiff's franchise will terminate on March 31, 1981 unless defendant is enjoined from failing to take action to renew and/or extend said franchise. Once said franchise has terminated, the de-

fendant city contends that it cannot be reinstated without a lengthy hearing on need and necessity as well as a competitive bidding scheme pursuant to defendant's municipal laws.

34. Defendant herein acted wilfully, maliciously, intentionally, oppressively and in reckless disregard of the possible results of its conduct, and accordingly, Plaintiff is entitled to punitive and exemplary damages for the sake of example and by way of punishing Defendant in the amount of $1,000,000.

THIRD CAUSE OF ACTION

(For Temporary Restraining Order
Preliminary and Permant Injunction
Against Defendant City)

35. Plaintiff realleges paragraphs 1 through 34 hereof and incorporate the same herein as though set forth at length.

36. As recited above, defendant City is illegally threatening to deprive Plaintiff under color of law and of statutes, ordinances, regulations, customs and usages of the State of California and City of Los Angeles of:

a. Its right not to be deprived of property without due process of law;

b. Its right, to equal protection of the law, all as guaranteed and secured to it by the Constitution and laws of the United States; and

c. Its right to engage in collective bargaining with its employees without local political interference.

37. The illegal actions of Defendant City have threatened to and will have caused Plaintiff irreparable injury, as alleged herein.

38. Unless this Court grants the relief requested, there exists no other adequate remedy at law or otherwise to protect Plaintiff from the threatened irreparable injury.

39. No injury could result to the City of Los Angeles through the Court's restraining and enjoining the illegal actions as described herein.

FOURTH CAUSE OF ACTION

(Declaratory Relief)

40. Plaintiff realleges paragraphs 1 through 39 hereof and incorporate the same herein as though set forth at length.

41. This is a claim for declaratory judgment pursuant to 28 U.S.C. §§ 2201 for the purpose of determining an actual, justifiable controversy that exists between Plaintiff and Defendant City of Los Angeles as appears hereinafter.

42. Plaintiff claims and Defendant City of Los Angeles, upon information and belief, denies that the aforedescribed action of the city under color of law violates the following constitutional rights of plaintiff:

a. Its right not to be deprived of property without due process of law;

b. Its right, to equal protection of the law, all as guaranteed and secured to it by the Constitution and laws of the United States; and

c. Its right to engage in collective bargaining with its employees without local political interference.

43. Plaintiff is entitled to a speedy hearing of this cause of action and is entitled to have it advanced on a calendar for hearing.

WHEREFORE, Plaintiff prays for relief from Defendants, as follows:

1. That Defendant City of Los Angeles and its officers, agents, representatives and employees be temporarily restrained and enjoined pendente lite and permanently from refusing to renew plaintiff's franchise and from

further interference with the collective bargaining activities between plaintiff and its employees.

2. For a declaratory judgment as follows: a declaration of the respective rights, duties and responsibilities of plaintiff and defendant, and a declaration and judgment that that the conduct of defendant as alleged herein is a *per se* violation of the following constitutional and statutory rights of plaintiff:

a. Its right not to be deprived of property without due process of law;

b. Its right, to equal protection of the law, all as guaranteed and secured to it by the Constitution and laws of the United States; and

c. Its right to engage in collective bargaining with its employees without local political interference.

3. The sum of Ten Million Dollars ($10,000,000) in general damages.

4. The sum of Ten Million Dollars ($10,000,000) in punitive and exemplary damages.

5. Costs of suit and reasonable attorneys fees.

6. For such other and further relief as the Court deems just and proper.

DATED: March 30, 1981.

/s/ Michael R. Mitchell
MICHAEL R. MITCHELL

/s/ John B. Rice
JOHN B. RICE
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff herein demands trial by jury of all issues of fact properly triable thereby.

/s/ Michael R. Mitchell
MICHAEL R. MITCHELL

/s/ John B. Rice
JOHN B. RICE

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNA

No. 81-1519 AAH (Gx)

GOLDEN STATE TRANSIT CORPORATION,
a California corporation, doing business as
Yellow Cab of Los Angeles,
Plaintiff,

vs.

CITY OF LOS ANGELES, a municipal corporation
Defendant.

DECLARATION OF JOHN RICE IN SUPPORT OF APPLICATION FOR TEMPORARY RESTRAINING

1. I am an attorney at law, licensed to practice law in this court and in the courts of the State of California. I maintain offices at 5850 Canoga Avenue, 4th Floor, Woodland Hills, CA 91367.

2. If called as a witness, I would competently testify under oath to the facts set forth herein based on my personal knowledge.

3. On Thursday, March 26, 1981, I appeared at the Offices of the City Clerk of the City of Los Angeles located on the Third Floor of City Hall, Los Angeles.

4. In accordance with the California Public Records Act, (See 6250, *et. seq.* California Government Code) I requested permission to inspect and obtain copies of documents contained in Official City Council file No. 80-1485, pertaining to the application of Golden State Transit Corporation, d/b/a Yellow Cab for a renewal of its taxicab franchise.

5. My request was granted and after inspecting the file, I requested copies of the several documents.

6. On Friday, March 27, 1981, I obtained the requested copies of documents from the Office of the City Clerk. True and correct copies of the documents marked Exhibits 1 through 11 are attached hereto and incorporated herein by reference.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on the 30th day of March, 1981 at Woodland Hills, CA.

/s/ John B. Rice
JOHN B. RICE

EXHIBIT 1

APPLICATION FOR FRANCHISE RENEWAL

CITY COUNCIL
CITY OF LOS ANGELES
Room 395, CITY HALL
200 North Spring Street
Los Angeles, California 90012

DATE: Mar. 31, 1980

Golden State Transit, Inc. hereby requests a renewal of its taxicab franchise(s) granted by Ordinance(s) No. 149,825 and 146,496 which expire on October 29, 1980.

The $200 application fee (certified check No. 04178), made payable to the City Treasurer, is enclosed as required by franchise procedure Ordinance No. 58,200.

/s/ Richard M. Burlingame,
Vice President
Golden State Transit Corp.

Enclosure

The Clerk reported that Certified Check No. 04178 of said Golden State Transit Corporation, drawn on the Community Bank, Huntington Park Office, in the sum of $200, accompanied said application.

In accordance with the provisions of Sections 13.4-13.50 of the Los Angeles Administrative Code, the President, on behalf of the Council, ordered said application referred to the Board of Transportation Commissioners for report.

EXHIBIT 2

REPORT
DEPARTMENT OF TRANSPORTATION

E18
August 26, 1980

To: Board of Transportation Commissioners
Wednesday, September 3, 1980

REFERENCE: Council Files 80-1717, 80-2070, 80-1643, 80-1485, 80-1709, 80-1642, 80-1358, 77-1167, 80-1608, 80-1356, 80-1787, 80-2101, 80-1246, 80-1365

SUBJECT: TWO MONTH RENEWAL OF EXISTING TAXICAB FRANCHISES

RECOMMENDATION

That your Board recommend to the City Council that all existing taxicab franchises, which all expire on October 29, 1980, be renewed to December 31, 1980 with no changes in the terms and conditions.

Company	Ordinance No.	Council File No.
Monarch Transportation, Inc.	149,002	80-1717
Southern California Transit Co.	146,498	80-2070
Lupe, Inc.	153,951	80-1643
Golden State Transit Corp.	149,825	80-1485
The F. Michael Crawford Corp.	151,680	80-1709
Celebrity Private Car Service	149,429	80-1642
A & W Cab Company, Inc.	153,851	80-1358
High Land Transit Co.	149,802	77-1167
		80-1608
Red and White Cab Co.	146,499	80-1356
Yellow Cab Co. of Culver City, Inc.	151,570	80-1787
James D. Mitchell	153,331	80-2101
Wilmington Cab Co.	146,501	80-1246
	149,699	
Los Angeles City Cab Co., Inc.	149,803	80-1365

That your Board request the Council to consider this action a "temporary" extension on the applicants' original request for renewal with final action by Council and Mayor to be completed prior to November 26, 1980.

DISCUSSION

The Comprehensive Taxicab Study, as approved by the Board on September 3, 1980, recommends extensive upgrading of franchise terms and conditions as the franchises are renewed.

The ordinances must be drawn up, approved and published by September 29, 1980, to become effective by the October 29, 1980 expiration date.

It appears that there may not be sufficient time for Council to meet this deadline. It will be necessary for the Board to recommend to the Council that the existing franchises be renewed for a limited period. A two month extension is recommended. A proposed draft of ordinance is attached.

This will afford the Committee and the full Council ample time to adequately review and act on the Board recommendations. The (renewal) ordinances must be published for 30 days and become effective before December 31, 1980.

Submitted

/s/ Neil B. Clark
NEIL B. CLARK
Principal Transportation Engineer

Approved

/s/ Donald R. Howery
DONALD R. HOWERY
General Manager

JR:db

Attachment

[Approved September 3, 1980
Board of Transportation Commissioners]

EXHIBIT 3

CITY OF LOS ANGELES
INTER-DEPARTMENTAL CORRESPONDENCE

Date: September 4, 1980

To: Transportation and Traffic Committee
c/o City Clerk's Office, 395 City Hall

From: Board of Transportation Commissioners,
1200 City Hall

Subject: RENEWAL OF EXISTING TAXICAB FRANCHISES
Council Files 80-1717, 80-2070, 80-1643, 80-1485, 80-1709 80-1642, 80-1358, 77-1167, 80-1608, 80-1356, 80-1787, 80-[illegible]01, 80-1246, 80-1365

The franchises of all thirteen (13) existing taxicab companies in the City of Los Angeles expire on October 29, 1980. Each company submitted an application for franchise renewal to the City Council whereupon it was referred to the Board of Transportation Commissioners for report.

At a special meeting held on September 3, 1980, the Board approved the following recommendations on this matter for Council action:

1. That a 5 year replacement taxicab franchise, that will expire on October 29, 1985, in accordance with the attached franchise be granted to:

   LUPE, INC.
   GOLDEN STATE TRANSIT CO.
   CELEBRITY PRIVATE CAR SERVICE
   RED AND WHITE CAB CO.
   WILMINGTON CAB COMPANY

2. That a four month probationary franchise with a provision for extension to five years upon affirmative finding of compliance by the Board, in accordance with the attached franchise, be granted to each of the following:

Companies	* Conditions of Probation
Monarch Transportation, Inc.	A
The F. Michael Crawford Corp.	B C
A & W Cab Co.	B C
High Land Transit Co.	A B C E
Yellow Cab Company of Culver City, Inc.	B C
James D. Mitchell	A B C D
Southern California Transit Co.	D

*A) Payment of franchise fees.
B) Compliance with all rules regarding leasing/contracting operations.
C) Furnish waybills and dispatch records.
D) Maintain minimum number of vehicles required by franchise.
E) Compliance with Affirmative Action requirements of franchise.

3. That the application of Los Angeles City Cab Company, Inc., for a replacement franchise be denied.

4. That any change in ownership of the grantee shall be subject to Council approval.

5. That the Council amend Section 71.05(b) of the Los Angeles Municipal Code to provide for an increase in vehicle permit fees for taxicabs and that the revised Section read substantially in accordance with the accompanying draft.

The Board also approved a recommendation to "temporarily" extend all existing franchises for two months. This discretionary action is more fully detailed on the attached approved Board report of September 3, 1980. A proposed draft of ordinance for each extension accompanies the report.

/s/ Carmen Alva
CARMEN ALVA
Secretary

JR:db

Attachments

cc: All franchised operators

EXHIBIT 4

RECOMMENDATION OF CITY COUNCIL TRANSPORTATION AND TRAFFIC COMMITTEE

COMMUNICATION

To: The Council

From: Pat Russell, Chairwoman
Transportation and
Traffic Committee

80-4592	80-1485	77-1167	80-2101
80-1717	80-1709	80-1608	80-1246
80-2070	80-1642	80-1356	80-1365
80-1643	80-1358	80-1787	

RECOMMENDATION

In order to provide for a further temporary extension of all 13 existing taxicab franchises due to expire on 12-31-80, as there is insufficient time to properly evaluate the Board of Transportation recommendations adopted on 9-3-80, and its "Staff Taxi Industry Study" and the Los Angeles County Interim Taxicab Industry Report, and to conduct a public hearing including receiving comments from the taxi industry, the Chairwoman of your Committee RECOMMENDS (the other two members being absent from the meeting at which this matter was considered), notwithstanding the recommendation of the Board of Transportation on 9-3-80 for a temporary extension only to 12-31-80 and its lack of quorum on November 13, 1980 to consider a three-month extension to 3-31-81, as follows:

1. That the following accompanying 13 ordinances which will "temporarily" extend all of the following 13 existing taxicab franchises from 12-31-80 to 3-31-81, with no changes in terms and conditions, approved as to form and legality by the City Attorney, BE PLACED UPON THEIR PASSAGE AND TRANSMITTED FORTHWITH TO THE MAYOR:

Company	(Original Or As Assigned) Franchise Ordinance No.	Area	Council File No.
Monarch Transportation, Inc.	149,002	A	80-1717
Southern California Transit Co.	146,498	A	80-2070
Lupe, Inc.	153,951	B, C	80-1643
Golden State Transit Corp.	149,825	B, C, D	80-1485
The F. Michael Crawford Corp.	151,680	B-1	80-1709
Celebrity Private Car Service	149,429	B-1	80-1642
A & W Cab Company, Inc.	153,851	C	80-1358
High Land Transit Co.	149,802	C-1	77-1167 80-1608
Red and White Cab Co.	146,499	C-2	80-1356
Yellow Cab Co. of Culver City, Inc.	151,570	D	80-1787
James D. Mitchell	153,331	D	80-2101
Wilmington Cab Co.	146,501 149,699	E	80-1246
Los Angeles City Cab Co., Inc.	149,803	B-2	80-1365

2. That the subject files be referred back to the Transportation and Traffic Committee for submittal of its recommendations regarding the renewal of existing 13 taxicab franchises and other recommendations of the Board of Transportation.

SUMMARY

The Comprehensive Taxicab Study, as approved by the Board on September 3, 1980, recommends extensive upgrading of franchise terms and conditions as the franchises are renewed.

Your Committee has been advised that the franchises of all thirteen (13) existing taxicab companies in the City of Los Angeles will expire on 12-31-80, having been extended to that date from 10-31-80. Each company submitted an application for franchise renewal to the City Council whereupon it was referred to the Board of Transportation Commissioners for report.

At a special meeting held on September 3, 1980, the Board in summary approved the following recommendations:

1. Five-year replacement taxicab franchises for five companies.
2. A four-month probationary franchise with the provision for extension to five years on affirmative findings of compliance by the Board for seven companies.
3. Denial of application for renewal for one company.
4. Changes of ownership be subject to Council approval.
5. That Section 71.05(b) of the Los Angeles Municipal Code be amended to provide for an increase in vehicle permit fees for associated taxicabs.

In addition the Board approved a recommendation to "temporarily" extend 13 existing taxicab franchises from 10-29-80 to 12-31-80. The City Council adopted ordinances extending said franchises to 12-31-80. The Board of Transportation Commissioners was scheduled to consider an additional three-month extension to 3-31-81 at its meeting on November 13, 1980 which was cancelled due to a lack of quorum.

In order for the ordinances to become effective 12-31-80, it will be necessary for the ordinances to be adopted by the City Council and published by 11-28-80. There is insufficient time for the Committee and the Council to deliberate on the Board of Transportation Commissioners' recommendation, review the comprehensive "Taxicab Industry Study" and the Los Angeles County Interim Taxicab Industry Report and supplementary materials, conduct public hearings and prepare necessary ordinances to meet the 12-31-80 temporary franchise renewal dates.

Therefore, the Chairwoman of your Committee is recommending that the ordinances be adopted forthwith to extend the franchises "temporarily" to 3-31-81; and that the subject files be referred back to the Transportation and Traffic Committee for its consideration of the Department of Transportation recommendations regarding the renewal of the existing taxicab franchises and related matters of the taxicab industry.

Respectfully submitted,

Pat Russell, Chairwoman
TRANSPORTATION AND TRAFFIC COMMITTEE

CBP:jd
11-19-80

EXHIBIT 5

REPORT
DEPARTMENT OF TRANSPORTATION

E18
January 16, 1981

To: Board of Transportation Commissioners
Thursday, January 22, 1981

Subject: MODIFICATION TO THE PROPOSED RENEWAL TAXICAB FRANCHISES

RECOMMENDATIONS

I. That your Board approve the following modifications to the first three of the Board's September 3, 1980 recommendations to Council on Renewal of Existing Taxicab Franchises and submit these revisions for Council action.

A. Modified Recommendation No. 1

That upon approval of the Mayor and Council by Ordinance a multi-year replacement taxicab franchise, that will expire on March 31, 1985, be granted to:

LUPE, INC.
GOLDEN STATE TRANSIT CO.
CELEBRITY PRIVATE CAR SERVICE
WILMINGTON CAB COMPANY
MONARCH TRANSPORTATION, INC.
THE F. MICHAEL CRAWFORD CORP.

B. Modified Recommendation No. 2

That upon approval of the Mayor and Council by Ordinance a one year franchise, which will expire on March 31, 1982 with a provision for renewal to March 31, 1985 upon affirmative finding by the Board of continuous compliance with all terms and conditions thereof and upon

approval of the Mayor and Council by Ordinance, be granted to the following:

A&W CAB CO.
HIGH LAND TRANSIT CO.
YELLOW CAB COMPANY OF CULVER CITY, INC.
JAMES D. MITCHELL
SOUTHERN CALIFORNIA TRANSIT CO.
RED AND WHITE CAB CO.
LOS ANGELES CITY CAB COMPANY, INC.

C. Recommendation No. 3—Eliminate

Eliminate the recommendation that the application of Los Angeles City Cab Company, Inc. for a replacement franchise be denied.

II. That your Board approve the following modifications to the proposed replacement franchises that were approved by the Board on September 3, 1980 and submit these revisions for Council action.

A. Modification to Five Year Franchise

1. Redesignate as a multi-year franchise.
2. Revise Section 2.2 to inicate an expiration date of March 31, 1985.
3. Revise Section 4.2(e) to read as follows:

4.2(e) All taxicabs operated on behalf of this franchise shall be under the direct control of the Grantee. All present leasing/contracting to driver-owners is to be terminated immediately upon completion of the lease/contract and in no event later than July 1, 1981. Grantee shall offer to employ all such affected drivers under an employer-

employee arrangement. Beginning on July 2, 1981 Grantee shall not be permitted to provide taxi service through a contracting or leasing type operation with a driver-owner, but only by the operation of its taxicabs by employees and officers of the grantee. Any such authorization which may have been granted to franchisee, or any predecessor in interest of franchisee, is accordingly hereby revoked.

B. Modifications to Probationary Franchise

1. Redesignate as a one year franchise.
2. Revise the second and third paragraphs of Section 2.2.

Second paragraph revised as follows:

This franchise shall expire March 31, 1982. The franchise will then only be renewed at the discretion of the Council, upon its adoption of the necessary ordinance, and provided the Grantee has demonstrated, to the satisfaction of the Board, continuous compliance with all franchise terms and conditions and specificially the following:

(a) Payment of franchise fees; (b) Compliance with all rules regarding leasing/contracting operations; (c) Furnish waybills and dispatch records; (d) Maintain minimum number of vehicles required by franchise; and (e) Compliance with Affirmative Action provisions of franchise.

Third paragraph be eliminated.

EXHIBIT 7

CITY OF LOS ANGELES
INTER-DEPARTMENTAL CORRESPONDENCE

E14

Date: January 26, 1981

To: Councilwoman Pat Russell, Chairwoman,
Transportation and Traffic Committee
Attention C. B. Pruner, City Clerk's Office,
395 City Hall

From: Board of Transportation Commissioners,
1200 City Hall

Subject: RENEWAL OF EXISTING TAXICAB FRANCHISES

Council Files 80-1717, 80-2070, 80-1643, 80-1485, 80-1709, 80-1642, 80-1358, 77-1167, 80-1608, 80-1356, 80-1787, 80-2101, 80-1246, 80-1365

The franchises of all thirteen (13) existing taxicab companies in the City expired on October 29, 1980. They were subsequently extended, by Council actions, to March 31, 1981 in order to allow sufficient time for the Council to review the Board's September 3, 1980 recommendations on replacement franchises.

The Transportation and Traffic Committee at their meeting of December 10, 1980 considered the renewal of the thirteen franchises including the matter of leasing to driver-owners by franchised taxicab companies. The Committee recommended that the matter of leasing to driver-owners by franchised taxicab companies be referred back to the Board to request that the Board consider alternatives for the accommodation of driver-owners whose authority to lease would be discontinued by the terms of the proposed franchises. The Board was also requested to include any necessary modifications to the proposed franchises.

At its regular meeting on January 22, 1981, the Board of Transportation Commissioners approved certain revi-

sions to their September 3, 1980 recommendations to Council on this matter. The revisions are discussed in detail on the attached Board approved report.

The following represents the Board's original recommendations as revised and is submitted for your action.

1. That a multi-year replacement taxicab franchise, that that will expire on March 31, 1985, in accordance with the attached draft be granted to:

   LUPE, INC.
   GOLDEN STATE TRANSIT CO.
   CELEBRITY PRIVATE CAR SERVICE
   WILMINGTON CAB COMPANY
   MONARCH TRANSPORTATION, INC.
   THE F. MICHAEL CRAWFORD CORP.

2. That a one-year franchise, which will expire March 31, 1982, with a provision that it will then only be renewed at the discretion of the Council, upon its adoption of the necessary ordinance and provided the Grantee has demonstrated to the satisfaction of the Board continuous compliance with all franchise terms and conditions, be granted to the following:

   A & W CAB CO.
   HIGH LAND TRANSIT CO.
   YELLOW CAB COMPANY OF CULVER CITY, INC.
   JAMES D. MITCHELL
   SOUTHERN CALIFORNIA TRANSIT CO.
   RED AND WHITE CAB CO.
   LOS ANGELES CITY CAB COMPANY, INC.

3. That any change in ownership of the grantee shall be subject to Council approval.

4. That the Council amend Section 71.05(b) of the Los Angeles Municipal Code to provide for an increase in vehicle permit fees for taxicabs and that the revised

   Section read substantially in accordance with the accompanying draft.

In addition to the above recommendations, the Board adopted the following resolution by Commissioner Michael Bennett:

> "I move that all existing authorities for leasing of taxicabs by franchised companies to driver-owners, granted by the Board pursuant to 71.15 of the Municipal Code, be rescinded on a phased basis, that the companies be instructed to terminate the driver-owner relationship upon completion of their one-year contract and in no event later than July 1, 1981, and that the City Council be advised of this action of the Board."

This matter is being returned for your action.

/s/ Joy Ventura
JOY VENTURA
Acting Secretary
Board of Transportation
Commissioners

JR:jcv

Attachments

cc: All Franchised Operators

EXHIBIT 8

TO THE COUNCIL OF THE
CITY OF LOS ANGELES

77-1167, 80-1246, 80-1356, 80-1358, 80-1365, 80-1485, 80-1608, 80-1642, 80-1643, 80-1709, 80-1717, 80-1787, 80-2101, 80-2070, 80-4592, 77-1337, 77-5255, 76-105 &

Your TRANSPORTATION AND TRAFFIC Committee reports as follows:

RECOMMENDATION

In order to provide for the replacement of all thirteen existing taxicab franchises due to expire on March 31, 1981 and to provide for an increase in vehicle permit fees for taxicabs, we RECOMMEND, as recommended by the Board of Transportation Commissioners, as follows:

1. That the accompanying six ordinances, granting a multi-year replacement taxicab franchise, that will expire on March 31, 1985, for the following six existing taxicab franchises, approved as to form and legality by the City Attorney, BE PLACED UPON THEIR PASSAGE:

Company	(Original Or As Assigned) Franchise Ordinance No.	Area	Council File No.
Monarch Transportation, Inc.	149,002	A	80-1717
Lupe, Inc.	153,951	B, C	80-1643
*Golden State Transit Corp.	140,825	B, C, D	80-1485
The F. Michael Crawford Corp.	151,680	B-1	80-1709
Celebrity Private Car Service	149,429	B-1	80-1642
Wilmington Cab Co.	146,501 149,699	E	80-1246

* Deleted and Continued to Feb. 17, 1981 [This line struck through in original document]

2. That the accompanying seven ordinances, granting a one-year franchise, which will expire March 31, 1982, with a provision that it will then only be renewed at the discretion of the Council, upon its adoption of the necessary ordinance and provided the Grantee has demonstrated to the satisfaction of

the Board continuous compliance with all franchise terms and conditions, for the following seven existing taxicab franchises, approved as to form and legality by the City Attorney, BE PLACED UPON THEIR PASSAGE:

Company	(Original Or As Assigned) Franchise Ordinance No.	Area	Council File No.
Southern California Transit Co.	146,498	A	80-2070
**A & W Cab Company, Inc.	153,851	C	80-1358
High Land Transit Co.	149,802	C-1	77-1167 80-1608
Red and White Cab Co.	146,499	C-2	80-1356
Yellow Cab Co. of Culver City, Inc.	151,570	D	80-1787
James D. Mitchell	153,331	D	80-2101
Los Angeles City Cab Co., Inc.	149,803	B-2	80-1365

** *Deleted and Referred back to Board of Transportation Commissioners. Substitute Ordinance Adopted extending existing franchise to May 31, 1981.* [This line struck through in original document]

3. That the Council be advised that all the franchise ordinances include the following provisions:

   a. That any change in ownership of the grantee shall be subject to Council approval.

   b. That all taxicabs operated on behalf of the franchise shall be under direct control of the grantee, requiring all present leasing/contracting to driver owners to be terminated immediately upon completion of the lease/contract but no later than July 1, 1981. Grantee shall offer to employ all such affected drivers under an employer-employee arrangement. Thereafter, the operation of the taxicabs will be only by employees and officers of the grantee.

   c. That all taxicab operators participate in the City-sponsored transportation coupon (user-side subsidy) program.

   d. Grantee is to make a base franchise payment of $41.67 per month for each sealed taxicab (equals

$500 per year) with an incremental increase of up to doubling of the payment based on the level of services. This is similar to the fees for the two associations in Recommendation No. 4.

4. That the accompanying ordinance amending Section 71.05(b) of the Los Angeles Administrative Code to provide for an increase in vehicle permit fees for taxicabs of the existing associations from $250 annually to $500 per year, with an incremental increase of up to $500 per year based on the level of service, approved as to form and legality by the City Attorney, BE PLACED UPON ITS PASSAGE.

SUMMARY

The franchises of all thirteen existing taxicab companies in the City expired on October 29, 1980. They were subsequently extended, by Council actions, to March 31, 1981 in order to allow sufficient time for the Council to review the Board's recommendations on the matter.

The Comprehensive Taxicab Study, as approved by the Board on September 3, 1980, recommends extensive upgrading of franchise terms and conditions as the franchises are renewed.

At a special meeting held on September 3, 1980, the Board in summary approved the following recommendations:

1. Five-year replacement taxicab franchises for five companies.
2. A four-month probationary franchise with the provision for extension to five years on affirmative findings of compliance by the Board for seven companies.
3. Denial of application for renewal for one company.
4. Changes of ownership be subject to Council approval.

5. That Section 71.05(b) of the Los Angeles Municipal Code be amended to provide for an increase in vehicle permit fees for associated taxicabs.

The Transportation and Traffic Committee at its meeting on December 10, 1980, in considering the recommendations of the Board for renewal of the thirteen franchises including the matter of leasing to driver-owners by franchise taxicab companies, submitted the franchises back to the Board for any necessary modifications and consideration of alternatives for the accommodation of driver-owners whose authority to lease would be discontinued by the terms of the proposed franchises.

The Department reviewed all of the thirteen companies and updated the status of each in regard to their eligibility for a multi-year franchise. In lieu of the original recommendations, the Board recommended that a multi-year replacement taxicab franchise, to expire on March 31, 1985, be granted to six franchisees.

The Department also recommended that a one-year franchise, to expire on March 31, 1982, with a provision for renewal to March 31, 1985 upon affirmative findings by the Board of continuous compliance with all terms and conditions thereof and approval by ordinance, be granted to seven companies.

The Board not only recommended substantial changes in the types of franchises to be provided but also recommended certain changes as to the status of the individual franchise companies under the full term versus provisional franchise.

The six companies listed in Recommendation No. 1 (full term) are in compliance with all terms and conditions of their franchise including these five specific conditions: (a) Payment of franchise fees; (b) Compliance with all rules regarding leasing/contracting operations; (c) Furnish waybills and dispatch records; (d) Maintain minimum number of vehicles required by franchise; and

(e) Compliance with Affirmative Action provisions of franchise.

Monarch Transportation, Inc. and The F. Michael Crawford Corp. were added to the 4-year list while Red and White Cab Company is now recommended for a one-year franchise due to possible violations of the rules regarding leasing/contracting operations with driver-owners.

Under Recommendation No. 2, A&W Cab Company, High Land Transit Company, Yellow Cab Company of Culver City, Inc., Southern California Transit Company, and possibly James D. Mitchell are also in violation of rules regarding leasing/contracting with driver-owners. Southern California Transit Company does not have its required 30 vehicles in service yet.

The Board originally recommended that Los Angeles City Cab Co., Inc. lease not be renewed based upon numerous violations of the franchise terms and conditions of the franchise and Department directives as enumerated in the Department staff report. In the past four months, however, City Cab has been actively involved in bringing its operation in compliance with the franchise terms and conditions and Department directives. Insurance problems have been resolved and the Company has eliminated all but three of its illegal driver-owners and is in the process of resolving this matter. The Department has been receiving requested records and documents from the Company. The Department therefore now recommends that this franchise be included under Recommendation No. 2 for a provisional one-year franchise.

It is noted that the one-year provisional franchise will allow the Department an opportunity to periodically review compliance with all franchise terms and conditions and develop the proper recommendation for extension to March 31, 1985. It will provide a period of time in which the companies must phase out their driver-owners and the Department can monitor the phase-out to determine compliance by July 1, 1981.

The proposed terms of the new franchises requiring the elimination of the franchise company's lease authority with driver-owners will create a problem that is difficult to resolve. The Department has explored this problem for a possible solution that would be acceptable to the driver-owners, companies and City.

The Department estimates that a total of a least 149 driver-owners, including 60 that are unauthorized, would be affected by the elimination of the authority for leases and contracts between franchise companies and driver-owners. The Department studied several alternatives for absorption of the driver-owners, e.g. driver-owners to be absorbed by the two existing independent associations; permit driver-owners to form a new independent association; or driver-owner to become an employee. It was concluded that the independent associations' options were not viable and that the most feasible solution to the problem is to combine a phase-out of driver-owners (as contracts run out) with a requirement that each company offer to hire driver-owners as employees. The leasing and contracting to driver-owners is to be terminated as the agreements lapse and in no event later than July 1, 1981. It was noted that many of the present agreements were signed in early 1980 for a one-year period with option to renew, conditioned upon continued sanction by the City of Los Angeles.

The former driver-owners would have the option of being hired as commission drivers or as fixed fee employees (pass-through) drivers. In either case they would be employees of the company, utilizing company taxis, and be provided, pursuant to Federal and State statutes, full social benefits, i.e. Social Security, Unemployment Insurance and Workers' Compensation.

There are various alternatives possible insofar as the current driver-owners who own their own taxicabs. They could sell their vehicle to the company through a contract that would allow the driver-owner an opportunity to

recover his investment in the vehicle and provide a credit on his initial "sign-up" fee; it could be a direct sale of the vehicle to the taxicab company; and there could be an arrangement where a taxi could be sold to a leasing company for an interest in the company and subsequently leased, as suggested by A & W Cab Company or High Land Transit, and become part of the company's taxi fleet.

Converting the driver-owner to an employee and absorbing his vehicle into the company's commission fleet will provide the driver with the protection of social benefits, which the Board of Transportation Commissioners has vigorously advocated, and at the same time provide a positive control of the driver and vehicle.

On November 20, 1980, the Board of Transportation Commissioners approved the Department's recommendation to include in the new taxicab franchises a requirement that all operators participate in the City-sponsored transportation coupon (user-side subsidy) program.

Your Committee conducted a public hearing with regard to the subject renewal of taxicab franchises, with no apparent dissent by the involved franchisees. There was no response from the repersentatives of the (A&W) owner-driver association. The representatives of the independent associations suggested that the franchise operators should not be allowed to lease at all, whether employees or not, and they felt that there was favoritism in the provisions of the franchises toward the franchise companies in relationship to the desires of the associations. The Teamsters Union, which represents the employees of the Yellow Cab Company, indicated support for the franchise provisions.

The franchise renewals provide a fixed franchise fee of $41.67 per month ($500 per year) with an incremental increase of up to doubling of the payment, based on the level of service, similar in impact to the new fees being

recommended for the two associations. The grantees previously were paying 1% of the total gross receipts from their taxicab operations, which is estimated at $50,000 of receipts per year per cab, with up to an incremental additional 1% based on level of service. This new payment should approximate the receipts from the old method but will be easier to administer.

The Yellow Cab Company indicated that it should not have to pay fees for taxicabs that are "out of service." The Department indicated that usually these taxicabs are out of service only temporarily and that any permanently disabled taxicabs could be administratively credited.

The two associations feel that their vehicle permit fees should not be increased from $250 annually to $500 annually, with a concurrent doubling of the incremental increase based on the level of service. The associations feel that they should not have to pay the $500 in one lump sum and should be able to pay in monthly installments similar to the payments by the franchisees for their sealed taxicabs. The Department indicated that it would review this request and the feasibility of collecting the fees from the associations rather than individual taxicab owners.

Respectfully submitted,

TRANSPORTATION AND TRAFFIC COMMITTEE

CBP:jd
2-2-81

[Motion adopted to approve Comte. Rec. Feb. 11, 1981—Los Angeles City Council as amended to the Mayor forthwith—* Ord. relating to Golden State Transit Corp. deleted and continued to Feb. 17, 1981]

EXHIBIT 11

MINUTES OF MARCH 23, 1981, CITY COUNCIL MEETING

March 23, 1981
Council File No. 80-1485
Item No. 14

At this point in the proceedings, Mrs. Russell was recognized in keeping with Item No. 14 on this day's Council Calendar.

Mrs. Russell presented the following Motion and moved, seconded by Mr. Farrell, its adoption:

MOTION

WHEREAS, the taxicab franchise granted to Golden State Transit Corporation, dba Yellow Cab Company, to operate upon certain streets in the City of Los Angeles, is presently due to expire March 31, 1981; and

WHEREAS, the City Council did previously act to extend such franchise to April 30, 1981, provided it was determined, on or before March 27, 1981, that it is in the best interest of the City to allow for such extension; and

WHEREAS, there are presently uncertainties relating to such franchise which will require investigation by the Department of Transportation; and

WHEREAS, it would not be in the best interest of the City to allow for such franchise to expire March 31, 1981;

NOW THEREFORE, it is hereby found and determined that it is in the best interest of the City to allow for such extension to April 30, 1981.

Moved by /s/ Pat Russell
PAT RUSSELL
Councilman
Sixth District

Seconded By /s/ Robert Farrell

[Mar. 23, 1981—Failed of Adoption]

The subject, as indicated on the Calendar, was consideration of possible findings required under Ordinance No. 154,931 to extend the terms of the taxicab franchise (Golden State Transit Corporation dba Yellow Cab Company), from March 31, 1981 to April 30, 1981.

Mrs. Russell moved, seconded by Mr. Farrell, that a Public Hearing of ten minutes duration be authorized to hear from those persons in the audience that wished to express their views.

The motion for Public Hearing was approved by unanimous vote.

The Council then heard from the following persons: Eugene Maday; Hugo Morris, Joint Council of Teamsters No. 42 and Local 572; David I. Shapiro; and Steve Robertson, Los Angeles Federation of Labor.

While each of the foregoing speakers expressed their own views, stated during the commentary were concerns by Mr. Maday that the City was intervening in a labor dispute (by the actions being considered) involving the company and the Teamsters. The other speakers indicated that no great taxicab shortage had taken place during the period of time the franchise holder taxicab was out of operation. It was also the labor organization speaker's contention that the employer (Yellow Cab) was bargaining "in bad faith" with the taxicab drivers employed by that company, thus to grant an extension of time and/or grant a further franchise to the company would not be in the drivers interests.

After the foregoing speakers had expressed their views, and as there were no other persons in the audience that wished to address the Council on the subject, the Public Hearing was closed.

At this point in the proceedings the following persons were assembled at the table within the Council semi-circle to answer questions and/or make statements if called

upon to do so: Donald Howery, General Manager, Department of Transportation; Neil Clark, Principal Transportation Engineer, Department of Transportation; and John Haggerty, Assistant City Attorney, Office of the City Attorney.

The measure was debated at length and during the commentary Mr. John Haggerty, representing the City Attorney's Office, advised the Council that the findings referred to in Mrs. Russell's Motion would have to be approved by the Council by March 27, 1981 if the extension indicated in the Motion was to be authorized. If the extension was granted, an ordinance granting a new taxicab franchise to Yellow Cab Company would have to be approved by the Council, signed by the Mayor and published on or before March 31, 1981, if, in fact, the indicated company was to retain the franchise. The franchise could not be authorized at a later date, the Council was advised, without the usual bidding procedure.

During the discussion, various Council members were recognized and expressed their views.

Following all commentary, Mrs. Russell's Motion failed of adoption by the following vote: Roll — (2-10)

The Chair advised that the Motion had failed and thereafter recognized Mr. Gibson. Mr. Gibson indicated that it had been his intention to vote "No" on the Motion.

It was agreed that the record would show Mr. Gibson's intention, and thereafter the Clerk was instructed to proceed with the next order of business.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

No. 81-1519 AAH(Gx)

GOLDEN STATE TRANSIT CORPORATION,
a California corporation, doing business as
Yellow Cab of Los Angeles,
Plaintiff,

vs.

CITY OF LOS ANGELES, a municipal corporation,
Defendant.

DECLARATION OF EUGENE MADAY IN SUPPORT OF APPLICATION FOR TEMPORARY RESTRAINING ORDER

I, the undersigned, declare:

1. My name is Eugene Maday. I am the president and controlling shareholder of plaintiff Golden State Transit Corporation, d/b/a Yellow Cab of Los Angeles ("Yellow Cab" hereafter). If called to testify as a witness, I would testify competently to the following facts based upon my personal knowledge.

BACKGROUND OF PLAINTIFF'S PURCHASE OF YELLOW CAB

2. In or about 1977, Yellow Cab's Los Angeles' predecessor was affiliated with the Westgate-California group of companies and was in bankruptcy or receivership. The bankruptcy receiver, Robert N. Mateer ("Mateer") was seeking a purchaser for the bankrupt's assets, including the Los Angeles City taxi franchise. At that time, the bankrupt was not operating pursuant to its franchise and was unionized. The bankrupt's drivers were unionized

through Teamster's Local No. 670 and were represented by Hugo Morris ("Morris") who also represented Joint Council of Teamsters No. 42. Mateer and Morris approached me and urged me to purchase the bankrupt's assets, including the franchise. Transfer of the franchise was required to be approved by the Los Angeles City Council ("City Council").

3. Richard Burlingame, an employee of the receiver and former employee of the bankrupt told me that getting the franchise renewed had always been automatic and that no Los Angeles taxicab franchise had failed to be renewed.

4. On or about April 1, 1977, Mateer told me there would be no problem if I bought the Company in obtaining the transfer of the existing franchise and even less problem in getting it renewed. I caused Golden State Transit Corporation to be formed to effectuate the purchase.

5. On May 17, 1977, plaintiff paid the receiver approximately $550,000 for the assets, including the right to use the name "Yellow Cab of Los Angeles" and, subject to City Council approval, all rights under the existing franchise.

6. On or about March 23, 1981, the president of Los Angeles City Council characterized plaintiff's purchase of the old company, after several months of no taxicab service in Los Angeles as bailing "the city out, not only with his generosity, but with the aid and help of the [teamsters] union." A true and correct transcript of the City Council hearing of March 23, 1981 is attached hereto, marked Exhibit 15 and incorporated reference.

7. In early May, 1977, Plaintiff applied for City Council approval of the franchise transfer. At that time, Robert W. Russell was General Manager of the City of Los Angeles' Department of Public Utilities (now the Department of Transportation) responsible for investigating proposed taxicab franchise transferees. About the end of May, 1977, Mr. Russell visited my offices. He told me personally that obtaining transfer of the Yellow Cab franchise would "take a little work," but that renewals "had always been automatic."

8. In July, 1977, the City Council approved transfer of the franchise to plaintiff and the transfer was affected. The transferred franchise was to expire October 29, 1980.

9. Thereupon, Yellow Cab undertook to and did operate pursuant to the franchise.

10. Upon plaintiff's formation, I paid $250,000 to plaintiff for all of its 25,000 shares of outstanding stock. I remain sole owner of all of plaintiff's outstanding stock. Since then, I have paid $736,325 additional capital into plaintiff and have personally advanced to plaintiff an additional $685,301. I am sole shareholder of Leisure Industries, Inc. which has loaned to plaintiff $427,172.

11. Since obtaining the franchise, plaintiff has purchased more than three million dollars worth of vehicles to improve and upgrade the quality of its fleet. Plaintiff is the largest taxicab operator in the City of Los Angeles with approximately 400 vehicles.

UNION AGREEMENT

12. Upon obtaining the franchise, plaintiff operated pursuant to a collective bargaining agreement with its Teamster drivers. The agreement expired in October, 1980. Plaintiff continued to operate pursuant to interim agreements with the Teamsters, but the parties continue to dispute regarding wages and benefits. This dispute has been and is subject to mediation by the Federal Mediation and Reconciliation Service. Plaintiff has been and continues to act in good faith to resolve the dispute. On February 11, 1981, plaintiff's drivers went on and remain on strike.

FRANCHISE RENEWAL

13. More than a year ago, on March 31, 1980, in anticipation of the October, 1980 franchise expiration date, Yellow Cab made written application to the City for renewal of its franchise and paid its $200 application fee (Exhibit 1 to Declaration of John B. Rice filed herewith). On April 1, 1980, the application was referred to the City's Board of Transportation Commissioners ("Board") for report. At that time, all thirteen (13) taxicab franchises in the City were also due to expire in October, 1980, and all other franchises also applied for renewals.

14. The Department of Transportation requested and on July 14, 1980 received an extension until September 15, 1980 to report on the thirteen franchise applications.

15. Meanwhile, the City (by the staff of its Department of Transportation) was engaged in a comprehensive taxicab study which culminated in a Report dated August 14, 1980 (Exhibit 12 attached hereto) which recommended that Yellow Cab and ten other franchisees be granted six month probationary franchises to be extended to five year franchisees under certain conditions. Yellow Cab was then and is now in full compliance with these conditions. The Report also recommended 5-year renewal of one franchise and non-renewal of another franchise.

16. During 1980, the City Council granted temporary franchise extensions to all thirteen operators, first until December 31, 1980 and then until March 31, 1981 (Exhibits 2 and 4 to Declaration of John Rice filed herewith). Various reports and recommendations form the staff of the Department of Transportation and Commissioners culminated in scheduling City Council action on long-term franchises for February 11, 1981.

17. But Yellow Cab and the Teamsters had still been unable to agree to a long-term labor contract. A short-

term agreement was scheduled to expire at midnight February 10, 1981 on the eve of scheduled Council action.

18. I am informed and believe and on such grounds allege that the Teamsters determined to use the franchise extension proceedings as a lever to force Yellow Cab to accede to their demands.

19. By letters dated February 5, 1981, the Teamsters notified the Mayor of Los Angeles and City Council of their intention to strike Yellow Cab on February 11—the date of scheduled Council action—unless an "acceptable settlement" was achieved. Copies of these letters, marked Exhibits 13 and 14 are attached hereto and incorporated herein by reference.

20. No settlement was reached and the Teamsters struck Yellow Cab on February 11, 1981.

21. On that date, the Council's Transportation and Traffic Committee submitted a report (Exhibit 8 to Declaration of John Rice filed herewith) to the Council which recommended that the City pass ordinances granting four year franchises to Yellow Cab and five other operators.

23. The report at page 4 specifically found that Yellow Cab and those five other operators "are in compliance with all terms and conditions of their franchise."

24. According to what I have been told by Jack Arvan, General Manager of plaintiff, Hugo Morris of the Teamsters appeared before the City Council on February 11, 1981. He detailed the labor dispute and urged that, because of the dispute, the Council should not grant a full four-year franchise to Yellow Cab. (See Declaration of Jack Arvin filed herewith).

25. I am informed and believe and on such grounds allege that because of Teamster opposition, the Council continued consideration of Yellow Cab's application to February 17, 1981. But the other applicants were treated

differently. The council proceeded to grant four-year franchises to the five other operators as well as one-year franchises to six additional operators. Also, the Council nonetheless adopted the finding that Yellow Cab was in compliance with all terms and conditions of its franchise (Exhibit 8 to Declaration of John Rice filed herewith).

26. On or about February 17, 1981, Jack Arvan, plaintiff's General Manager, informed me that Bill Tico, business agent for the Teamsters, had threatened that "if Maday doesn't settle his labor dispute, he's going to have a lot of trouble renewing his franchise." (Declaration of Jack Arvin filed herewith).

27. On February 17, 1981, the Yellow Cab renewal ordinance was not presented for adoption. Instead, at the Teamster's urging, and contrary to the Department of Transportation recommendation, the City Council adopted a substitute ordinance to extend Yellow Cab's franchise only until April 30, 1981 and subject to the condition that the Council make an affirmative finding that it was in the "best interest" of the City of allow the extension. No other franchise except Yellow Cab was subject to such a condition. I am informed and believe and on such grounds allege that the City's governing procedural ordinance makes no provision for such a finding as a condition to the grant of a renewal franchise.

28. On Sunday, March 22, 1981, Hugo Morris, the Teamster representative, said personally to me, "We are going to see that the City revokes or does not renew your franchise if you do not meet our demands."

29. On March 23, 1981, the City Council met to consider whether it was in the "best interest" of the City to allow Yellow Cab the one month extension of its franchise. The Council invited parties to "express their views." I urged the Council to grant the extension to avoid intervening in the labor dispute. The Teamsters urged denial of the extension because, they contended,

Yellow Cab was bargaining "in bad faith" with the drivers and that to grant a further extension would not be in the *drivers'* best interests. A transcript of the City Council meeting is attached hereto marked Exhibit 15 and incorporated herein by reference ("Transcript").

30. The Teamster representative recited to the Council the purported "modest" demands labor was making on Yellow Cab and Yellow Cab's purported intransigence. He reported that the striking workers had voted, with only one dissent, "to endorse the position that the franchise not be extended. . ." He said he hoped that present Yellow Cab employees "would be hired by whatever successor is established" for Yellow Cab. (Transcript, page 5).

31. The AFL-CIO representative, representing the "brothers and sisters" of the Teamsters, reminded the Council that there are 700,000 union members in the County (Transcript, page 8), claimed that Yellow Cab was acting in "bad faith," and urged denial of the franchise. (Transcript, page 9).

32. The President of the Council stated that "it will be very difficult to get this ordinance passed to extend this franchise if the labor dispute is not settled by the end of this week . . ." and that "both sides should realize that [if] it is not done by the end of this week, that there is a very good possibility that there will not be a . . . franchise for Yellow Cab, it will lapse, it will be open to . . . other . . . companies." (Transcript, page 21).

33. Thereupon, the Council voted to defeat the motion which recommended that the Council find that it would be in the best interests of the City to extend the franchise. Yellow Cab was thereby denied even a thirty day extension of its franchise.

34. At no point in the franchise renewal proceedings was plaintiff notified that any evidentiary or fact finding hearing would be held to determine whether the franchise

should be renewed. Plaintiff was never offered an opportunity to present sworn testimony, to offer admissible evidence, or to cross-examine opposing parties under oath. The only factual findings adduced were that plaintiff was in full compliance with all the terms of its franchise.

35. The refusal of the City to grant plaintiff a four-year franchise when five other operators obtained such franchises under similar circumstances was arbitrary and capricious, and was based solely upon political consideration of the financial resources and voting power of the City's large union population. Several members of the City Council are presently engaged in reelection campaigns for an election to be held in less than one month. One of the council members is running for the office of City Attorney in the same election. The City's mayor is also running for reelection in that election.

36. I feel as if the City Council has "put a gun to my head" in threatening franchise expiration unless plaintiff accedes to the Teamster demands. The city has severely damaged if not destroyed my ability to bargain with the union.

37. Unless this Court grants the temporary restraining order as requested, Yellow Cab's franchise will lapse March 31, 1981. Loss of the franchise will cause irreparable injury to Yellow Cab. Yellow Cab will be completely forced out of business with major or total loss of investment.

I declare under penalty or perjury that the foregoing is true and correct and that this declaration was executed on the 30th day of March, 1981 at Los Angeles, CA.

/s/ Eugene Maday
EUGENE MADAY

EXHIBIT 13

JOINT COUNCIL OF TEAMSTERS NO. 42

[Letterhead]

February 5, 1981

Mayor Tom Bradley
City Hall
Los Angeles, CA 90012

Dear Mayor Bradley:

Enclosed for your information is a copy of a letter to John Ferraro. The same letter has been sent to all members of the City Council.

We appreciate your continuing interest in this matter.

Sincerely,

Hugo Morris, Director of Public Affairs
JOINT COUNCIL OF TEAMSTERS NO. 42

HM:bv

cc: Eugene Maday
Alan Friedman
Jerry Cremins
Robert Chick
Donald Howery
Fran Savitch
Julie Sgarzi
Bill Robertson

EXHIBIT 14

JOINT COUNCIL OF TEAMSTERS NO. 42

[Letterhead]

February 5, 1981

Hon. John Ferraro
Councilman, 4th District
City Hall
Los Angeles, Calif. 90012

Dear John:

This letter is to inform you of the current status of the Yellow Cab negotiations.

In December, agreement was reached on a short-term contract ending at midnight on February 10, 1981.

We have been meeting with the company this week and are scheduled to continue negotiations over the weekend. Membership meetings have been set for Monday the 9th to approve or disapprove whatever proposal results from the discussions. If it is not possible to achieve an acceptable settlement, there will be a strike on Wednesday, February 11th. We will make every effort to arrive at a settlement that will prevent this from happening.

The company and the union are very conscious of the fact that on February 11th the Council is expecting to consider two matters that have great impact upon the negotiations:

1. The franchise ordinance which includes the requirement of employer-employee status for all drivers.
2. The rate increase for Yellow Cab.

The union strongly supports both recommendations as necessary to the establishment of a viable company op-

eration with reasonable working conditions for the drivers.

If you have any questions or concerns that you would like to discuss prior to the Council meeting on Wednesday, please call my office so that arrangements can be made for a meeting with you or a member of your staff.

Sincerely,

Hugo Morris, Director of Public Affairs
JOINT COUNCIL OF TEAMSTERS NO. 42

HM:bv

EXHIBIT 15

TRANSCRIPT OF CITY COUNCIL PROCEEDINGS

BY MR. FERRARO:

That is approved and we have a forthwith to the Mayor there is no objections that will be the order. Next item. Mr. President number 14 was called the Motion of Valdez by Mrs. Russell relates to number 14. Mrs. Russell we do have one card to be heard.

BY MS. RUSSELL:

Mr. President, members of Council, item number 14, as you can see on the calendar has to do with the extension of the Yellow Cab Franchise and is something that we have looked at in Council for a while.

I'd like to check on your Motions and look at the Motion I've brought in this morning which is 14A. This is something that we will discuss. Let me just give you the brief report on the Motion, I will then move for a public hearing Mr. President and then I would like to speak again after the public hearing, to help clarify for the members where we are, but the Motion clarifies for you the situation where we are whereas the taxicab franchise granted to Golden State Transit Corporation, that is, Yellow Cab Company to operate upon certain streets in the city of Los Angeles is presently due to expire March 31, 1981 and whereas the city council previously extended such franchise at April 30, provided it was determined on or before March 27, 1981 that it is in the best interests of the City to allow for such extension, that's the situation we have before us now. The Motion goes on to say whereas there are presently uncertainties relating to such franchise which will require investigation by the Department of Transportation and we do need to get a report from the Department I will speak to that later.

Now, the last two paragraphs we need to look at and they are what I think we will hear about in the public

hearing whereas it would not be in the best interests of the City to allow for such franchise to expire March 31, 1981, therefore, it is hereby found and determined that it is in the best interests of the City to allow for such extension to April 30, 1981. This is the question members of council that you will be deciding today and I think you will want to listen for in the public hearing as I will move for in the public hearing.

BY MR. FERRARO:

Alright, there are no objections to the public hearing, but before we have the public hearing, Mrs. Russell, could we have the staff come to the center table and if they want to add anything before the public hearing? Or do you want to wait until after?

Alright. If you could come to the center table. Alright the, Mrs. Russell, how do you want those, those in favor or those opposed, or just one of each? Alright. Mr. Maday, Eugene Maday is in favor, take the center microphone, Mr. Maday, and . . . alright, members of the Council, could we have your attention please. Go ahead, Mr. Maday.

BY EUGENE MADAY:

Ladies and gentlemen, my name is Gene Maday, I would like to speak on the impending proposal. I don't think there should be a public hearing, I think my franchise should be granted to me the same as it has been granted to the other companies for approximately a five year period. We are in the middle of the labor dispute. The teamsters are using this as nothing but a ploy and using you people to try to settle their labor disputes. I do not think that this is proper, I do not think that the City should be involved in the labor disputes, I do not think that the Teamsters should call upon the City to do their dirty work. There have been an awful lot of lies, innuendos, statements taken out of context which the

Teamsters have used against me and they are trying to use these things to influence you people to do their bidding and to put Yellow Cab out of business like they did then last time and trying to take control of the company for their own personal gain. Thank you.

BY MR. FERRARO:

Alright, Mr. Hugo Morris.

BY HUGO MORRIS:

I'm Hugo Morris, representing the Joint Council of Teamsters #42 and Local 572 of the Teamsters which represents the cab drivers at Yellow Cab. Four years ago we urged the Council to approve the franchise transfer to Yellow Cab to protect the jobs of the drivers that were put out of work because of the bankruptcy of Yellow Cab, not as Mr. Maday just stated where Yellow Cab, he alleged, was put out of business by the Teamsters. Now to our great regret we are asking that Yellow Cab franchise not be extended.

Why are we doing this? Mr. Maday said six months ago that he didn't want a union contract in Los Angeles, but we have been trying to persuade him over the life of the prior agreement and during the past six months of our negotiations that Los Angeles is different from Las Vegas. That this is a city where people are entitled to decent wages and working conditions and he just said a minute ago that we are using this as a ploy. It's a strange ploy that would ask that the council not have the franchise renewed, because obviously we will end up without a contract with Yellow Cab. We have hopes that the people employed at Yellow Cab would be hired by whatever successor is established to cover the areas which Yellow Cab now covers, either in existing franchise or some new franchise. We do not have any assurance or guarantee of that other than insurance from one current franchisee that is willing to hire those cab drivers

in order of seniority to be covered by that franchise, if that franchise should be expanded to cover this area, of course that is not determined. This is not a matter of negotiation ploy at all. Mr. Maday has said that he does not want to sign a union contract and all of his activities during the past six months involving 20 negotiations meetings have been to that effect. I don't want to burden you with all the details of the negotiations, we have the files and tried to keep you in touch with the negotiations as they have developed; you have been aware of everything that has happened. The contract was extended from October until February in order to try to reach an agreement. The franchise was extended three months already from December 31 until March 31. We have tried mediations through the Federal Mediation and Conciliation Service and through the Mayor's Labor Management Committee. Our proposals were extraordinarily modest. Forty-six percent of the revenue, less half the cost of gas, and if anyone is interested I would be happy to go into detail. That compares with the Contract of Wilmington where they pay, the company pays 50% and the company pays the full cost of gasoline. We proposed that contract to Mr. Maday at the outset of negotiations and have gone down from that point to the point where we were last week. There was a meeting last Sunday, a week ago yesterday. The company made a worse proposal than they had before. The strike has now been going on six weeks. The cab drivers have been put to the wall. They voted almost unanimously, with one dissenting vote last Thursday to endorse the position that I am stating to you, which is that the franchise not be extended for all the reasons stated in the letters that were sent to you. An extension of four weeks could mean four weeks more of a strike with no hope of settlement, Mr. Maday said in the paper today that he expects the strike to be a long one, maybe as long as six months, that means a lot of people out of work for that extensive period of time, if an extension were granted. But it is not a matter of supporting one side or another as he stated in the press

and as he stated here. It is a matter of achieving equity, decent conditions of work for cab drivers in Los Angeles so that they can earn a decent living with decent benefits and we hope that we can achieve that in the future with whoever is the franchise that follows Mr. Maday as the Yellow Cab franchise. We feel that it is in the interest of the City to have good service and the only way to get good service is by having people who are paid reasonably well, as indicated in the papers, the cab drivers earn between $150 to $200 a week including tips. We urge a no vote on the resolution before you so that steps can be taken as early as possible to open up the area to either a new franchise or an existing franchise. I won't go into the details of the National Labor Relations Board Complaint, the violation of the Commission Order on flow-through, the $6,000.00 which Mr. Maday refused to pay in violation of the Commission Order which provided for an extension of the flow-through, the flow-through was intended to go through the entity paying for the cost of gasoline which was not Mr. Maday, and he took that $6,500.00 without good cause and the Labor Commission so found and now there is an involuntary bankruptcy petition filed on behalf of the lawyer who worked for Mr. Maday over the last two years with a $53,000.00 claim which will be considered in the court. These are subsidiary matters, the main one being the one that I stated at the outset, but they are all part of the package that relates to what Mr. Maday's history has been and in particular his history recently in regard to this matter of the Yellow Cab franchise in L.A. We respectfully request that you do not extend the franchise.

BY MR. FERRARO:

Alright, we have David Shapiro.

BY MR. DAVID SHAPIRO:

David Shapiro, president of the United Independent Taxi Drivers. I would like to say that with the demise

of the Yellow and 350 less taxis in Los Angeles, I would like to inform the Council that the drivers are now being served and are able for the first time in two and one-half years to make a decent minimal living. Secondly, the doormen of the major hotels of the city report to me that they are having better quality service with the demise of the Yellow Cabs than they have ever had before. I would like to comment on Mr. Morris's wish for a new franchise. I think that would be a terrible mistake. The problem about drivers not earning a living in Los Angeles is a flooding of the streets where they are diluted in terms of the limited numbers of people who ride taxis, and if only you would allow the system to exist as it is now and not further consider adding a new or replacement franchise. If we could only work out those numbers and other kinds of conditions would set the standards where a person wants to drive a taxi for a living for the rest of his life, then like today we would have a much better serving system and there would be hope for the public and the drivers of the City. Thank you.

BY MR. FERRARO:

Steve Robertson.

BY MR. STEVE ROBINSON:

President Ferraro, members of the Council, my name is Steve Robertson, Public Relations Director of the AFL-CIO. We entered into these negotiations with our brothers and sisters from Teamsters about six months ago in the anticipation that through the collective bargaining process we would be able to negotiate a union contract. Representing 700,000 union members of Los Angeles County who are very unhappy that the situation is now, we have no union contract. In Los Angeles, and we believe the owner of the Yellow Cab company does not respect this, we have a healthy respect of the collective bar-

gaining process and we believe that the strike is not in the best interests of the City. I would also like to point out that this council on all of the issues tha are brought before you as far as Yellow Cab is concerned, has given us unanimous support. We believe that the Council has offered good faith, that there has been good faith from labor both from the Teamsters and the AFL-CIO, so we believe there has been bad faith from the employer. I would like to point out something that is very important in this situation. Most of the workers at Yellow Cab, most of the drivers are minorities. They earn between $150.00 and $200.00 a week. Many of them don't even make the minimum wage. We believe that they deserve better than this and that they aren't going to get it from the Yellow Cab franchise. Any extension of the franchise beyond March 31 will mean added weeks to the Yellow Cab's strike. We would like to see that strike settled. But there is no hope of reaching a negotiated settlement as far as we are concerned. The union membership of cab drivers voted to ask the City Council not to extend the franchise. We respect that vote and the AFL-CIO is asking you not to vote for the extension and not to vote for the franchise. Thank you.

BY MR. FERRARO:

Alright, that completes the public hearing, the ten minutes is up anyway and there is no one else that wants to be heard, so, Mrs. Russell.

BY MS. RUSSELL:

Mr. President, members of Council, I would like to just give you a couple of pieces of information. We, I think, need to keep in mind that our responsibility on this issue is to give public service and to do the best we can in terms of providing good public transportation for our citizens. As a matter of fact, in terms of taxis we have been moving that way in the last several years and

months as all of you know. This particular issue as you know involves labor disputes. I think that we do not want to be involved in that labor dispute and we have heard people speak to that this morning. I think we have to recognize that simply by making a decision or by not making a decision that we have some involvement in the dispute, and we just have to accept that. Remembering that the basis for our decision really is public service, if we continue a franchise, we assist one side, if we do not continue a franchise, we assist the other side, that is the way it comes out. Our basic responsibility, though, is the service to the public and I think that's really where we have to be in our discussion. We also want to be fair to all of the parties involved and this includes the drivers, the owner, the union, but again, the people we have to be the most concerned about are the general public. I do want to close, and I think the members want an opportunity to make some comments and perhaps ask some questions, but I do want to say to the members of the Council that we have been working with the Department of Transportation who have spent clearly an inordinate amount of time on the taxi situation in general, and I will be bringing in a Motion tomorrow which will instruct the Department regardless of the outcome of today, but which will instruct the Department to make a study on the impact of the cab situation on the streets as we see it by now, of the service level, and then get back to us probably within 30 days on a report and giving us alternatives but will be able to move ahead.

BY MR. FERRARO:

Mr. Cunningham.

BY MR. CUNNINGHAM:

Thank you very much, Mr. President, members of the Council. I don't see how for the life of me we can put our heads in the sand and not understand that the in-

terests of the labor dispute has a direct bearing on the decision that we make here today. I think the degree Mrs. Russell has characterized it aptly so that to a degree that if we grant the extension we do give an edge to the existing operator and to the existing franchise operations. Mr. President, I don't know how for the life of me, any of us can hold our heads in the sand and not take a look at the impact and then take a look at what is happening in those negotiations. I mean, I don't think any of you if you were a cab driver would be willing to forego your medical benefits if you had had those at your previous contract, and if you have an operator whose sole objective, but maybe it might not be made an objective and I understand it is stated on several occasions, but apparently from his actions, the objects of the operator must have been certain that he breaks the back of the union. How do you get to the public interests and to the public services necessary? The way you get to it is to have an operating company that has labor peace, that has the kind of drivers that are courteous, and kind to the public, but who are also making a decent living at a decent wage for their families. $200.00 a week is, I'm sure if you stop to think about it, it certainly leaves them at the very minimum at the poverty level. I don't see any way which I could support this extension. The last time this matter was before us, we indicated very clearly to both sides involved that this Council did its proper duty and we were willing to grant a two month extension at that time to at least give an opportunity to the warring parties to come together and to try to resolve their differences. I think the Council was fair in that extent. I think it was unfair for an individual to come here and try to indicate to us that we believe that the workers want to put the very company that they work for out of business, because without a place to work, they have no income, but I still think that what they are saying to us they don't intend to continue to be wage slaves or continue to be jacked around and jerked

around at the whim and caprice of the owner or operator of that facility. I think it would be wise for us as members of this Council to clearly make a statement by turning down this extension as soon as there is an agreement, we can certainly reopen the matter and be able to extend the franchise. Let me ask those at the table, when does the franchise die? March 31? Right?

BY JOHN HAGGERTY, ASSISTANT CITY ATTORNEY:

Yes. As and now the franchise dies March 31st.

BY MR. CUNNINGHAM:

And if there is an action before March 31, the Council can respond. Right?

BY MR. JOHN HAGGERTY:

Well, the Council would have to make the necessary finding by this Friday at the latest for the extension to go until the end of April. For it to go beyond the end of April, a second ordinance or new ordinance would also have to be passed and published by the end of this month.

BY MR. CUNNINGHAM:

So you are saying on Friday the Council could take action, that would still give a timely activity to the extension of the franchise.

BY MR. JOHN HAGGERTY:

Well, yes. Counsel has to make the necessary findings by this Friday at the latest to extend the franchise to April 31. For the franchise to be extended beyond that an ordinance would also have to be passed and published by the end o (sic) this month.

UNKNOWN

Well, I think . . .

BY MR. CUNNINGHAM:

Has this been clearly stated to the parties at odds in this matter?

BY MR. HAGGERTY:

It has been clearly tated (sic) to those people who have contacted me and asked me, yes.

BY MR. CUNNINGHAM:

So you don't know whether the parties at odds or not, you just know that theparties (sic), people who have contacted you, you have stated and made it clear to them. Mr. President, I think that the Council stil (sic) has time to act and on the other hand, the parties have time to act. And if there is good faith and there is reasonableness etween (sic) parties, then with the deadline of Friday staring them in the face, despite no matter how one person might want to charcterize (sic) us on the City Council, yes we do respond to pressure, we do respond to the concerns of those who are constituents of mie (sic), and I want to make it very clear that the minority drivers tend to be residents of my district, Lord knows what the kind of hings (sic) that are happening, they can't even get CETA jobs now. CETA closes March 31, so I don't know where to tell these guys to go except to try to bring the pressure to bear wherever we can to try to suggest to the owner that it would be wise for him tosit (sic) down with the union . . ., the parties and have it done, right?

BY MR. HAGGERTY:

As far as the finding goes.

BY MR. CUNNINGHAM:

O.K. Once you make the findings thn we will take the, then we've got to move on the arguments at the time.

BY MR. HAGGERTY:

That's correct. And the ordinance has to be published by the end of this month or by next Tuesday.

BY MR. CUNNINGHAM:

I understand. So simply. I'm going to vote no on the extension and Ican (sic) assure you that as soon as this dispute is resolved I will be the first one to bring in the findings, to bring the action in so that we an go forward.

BY MR. FERRARO:

* * * *

BY MR. YAROSLAVSKY:

Thank you Mr. President. Mr. Howery, could you tell me since the strike, how lng has the strike been going on now? About a month?

BY MR. HOWERY:

Since February 11.

BY MR. YAROSLAVSKY

And since that time have there been nough (sic) taxi cabs on the streets to pick up the slack that has been left by their lack of presence?

BY MR. HOWERY

We have not done a tudy (sic) on this, but we . . .

BY MR. YAROSLAVSKY

What is your professional opinion?

BY MR. HOWERY

We have not received complaints.

BY MR. YAROSLAVSKY

O.K. . . .

BY MR. HOWERY:

As to lck (sic) of service. Yellow Cab was running about 5,000 trips per day, about 60% of those were by phone or 3,000 per day, the other ompanies (sic) have indicated that their service level has increased substantially. Yellow is still getting about 2,000 calls per day onthe (sic) telephone even though they are not in business.

BY MR. YAROSLAVSKY

Mr. Howry isn't it your professional judgment that we had prior to the strike a glut of taxicabs on the streets of Los Angeles?

BY MR. HOWERY:

We believe that there were too many. I wouldn't label it a gut.

BY MR. YAROSLAVSKY

O.K. There were too many.

BY MR. HOWERY:

There were more than enough taxicabs on the street.

BY MR. YAROSLAVSKY

Mr. President, I ca (sic) report to you that my office which is the collector of all complaints from social security to Afganistan (sic) to taxicabs have not eceived (sic) very many calls on the Yellow Cab strike at all. Our community has grown accoustomed (sic) to poor

service in the past and w (sic) have not had any complaints this time around. Maybe they're getting better service from the independents, I don't know, or theother (sic) companies. What I'm driving at is this, if we were to cancel the franchise, or not extend this franchise, what would thepublic (sic) in Los Angeles be losing? Seems to me they wouldn't lose a damn thing, and in fact we might actually be creating a more healty (sic) marketplace in the taxicab industry because instead of having to sit around or try to get cab rides in all kinds of ways thathave (sic) been reported to you and to us, all kinds of unethical behavior that may not be taking place in the taxicab business becase (sic) there there (sic) are too many cabs, maybe that will come to an end and everybody will have enough business now to do their job an (sic) if we don't have that kind of a situation, then after a while we will be able to reissue or reopen the talks for a new franchie (sic) and Mr. Maday presumably could apply at that time if he so chose. But I'm not even looking at this and I resent the implicaion (sic) that the council, I can understand where that implication would come from, that the council is being used as a leverge (sic) against the Yellow Cab Company, by the same token, I can see why the Yellow Cab Company would want to seek to use the council's levrage (sic) against the Teamsters Union. What I'm looking at it from is the point of view that how is the public going to get the bes (sic) level of service, and I think the public is being better served with Yellow Cab off the streets. Now I, . . . that's why I'm inclined to nt (sic) to vote for Mrs. Russell's extension unless I hear some overriding compelling reasons, but, Mr. President I, there is just a ertain (sic) amount of intuition around here one in awhile that has to play a role if we didn't have good intuition, then we wouldnt (sic) be sitting here year after year, and my intuition tells me in this case that Yellow Cab Company has not made every effort to egotiate (sic) on this point. I just believe that very strongly and I have good reason to believe beyond that

even worse things, butI (sic) just don't like the attitude, I don't like what I hear that has been said, I don't like the negotiating posture, there are tw (sic) ways to skin a cat, one way is to be a total . . . and another is to try and find a middle ground with some common negotiatingpossitions (sic) and that does not seem to characterize that latter ideas, does not seem to characterize Yellow Cab in this case. An (sic) Mr. President, I remember your speech a few years ago, when you indicated that you would never want to see the city held ranso (sic) again or held hostage again by any one cab company, and I think first of all we are not being held hostage now, because we do ave (sic) other cab companies, by the same token I think we have a responsibility to do justice to those who would seek to hold us hotage (sic) if they could, and that is why my inclination is to vote with to vote against 14A and to withdraw their franchise.

BY MR. FERRARO:

Mr. Farrell.

BY MR. FARRELL:

Mr. President I like agree with what my college (sic) David Cunningham said on the whole issue, with one pint (sic) though. These fellows have had about 20 meetings or so, and they have not been able to come to resolution. I believe if t (sic) was going to be there for the resolution to come, it would have been. I would simply like to add that we not even consider coninuance (sic), I'd just like to as a no vote today.

BY MR. FERRARO:

The Chair will recognize Mr. Bernardi and then Mr.

UNKNOWN

Oh, Mr. Ferraro by Presidential fiat he has requested to be heard first,

UNKNOWN

And I know the power of the President.

UNKNOWN:

The Chair will rcognize (sic) Mr. Ferraro, our great president for. . .

BY MR. FERRARO:

Mrs. Picus, I would like permission to speak.

UNKNOWN:

Well, you don't mean Mrs. Picus' ermission today, you have mine.

BY MR. FERRARO:

O.K. Mr. President, Mr. Temporary President. Members of the council, this is a very touching situation and we all knw (sic) that this has been a problem and I think one of the advantages of being President is restructuring the committee, I took thisout (sic) of the Industry and Transportation Committee which is now interested in economic development and given to Mrs. Russell to Transportation.

UNKNOWN:

That's why they want to remove you as President.

BY MR. FERRARO:

So, but uh, as we Mr. Yaroslavsky recaled (sic), we had a very tough decision to make a few years ago. It was four years now that the Yellow Cab went bankrupt and we were. How long were we idle before Mr. Maday came in. How long was that?

BY MR. JOHN HAGGERTY:

I think it was about three months.

BY MR. FERRARO:

t (sic) might have been longer than that, but anyway, Mr. Maday came in and bailed the city out, not only with his generosity, but with the aid and held of the union. The unions worked hard to find somebody to come in and to take this over and we had a lot ofpeople (sic) out of work, men and women, didn't have any pay, didn't have any benefits, there was backpay that they hadn't received, nd (sic) it was a very sad situation and because of that we expanded the other cab companies, we created the independent cab companies, and the city is in better shape now. We are not getting the calls because of this strike that we got when they went bankruptbecause (sic) there has been a the ability of other companies to take over the slack. I think it, I think we are in a real bind becase (sic) whatever we do, we have a deadline. If we don't have the ordinance on pending when it comes up if it comes up again before he (sic) end of the month it has to be a unanimous vote and there as to be 12 members here and that is not, the possibility is that on't (sic) happen, so there could be a period of time there wouldn't be a franchise. What would happen.

BY MR. JOHN HAGGERTY:

If the franchise were to lapse, it could not then at a later day automatically be . . .

BY MR. FERRARO:

We cannot automatically extend . . .

BY MR. JOHN HAGGERTY:

Well, it should automatically lapse then that franchise or franchise would have to be put back out to bid if the decision was made that a new franchise was desirable. I guess what I'm trying to say if the franchise were to lapse, that the present operator would not automatically be entitled to pick up that franchise as it comes through

at at later date, and decide they wanted to allow for the renewal of that franchise.

BY MR. FERRARO:

Alright, that's the dilemma we find ourselves in and let me say that this condition has been pending for sometime, they there was a threatened strike before the holidays, and uh with the impact of the Mayor's Office, we were able to get the parties together and they continued to work and they extended it for 90 days or whatever it was and now we're back in the same problem and I find that it will be very difficult to get this ordinance past (sic) to extend this franchise if the labor dispute is not settled by the end of this week. And I think that both sides should realize that, that it appears that the Council is not going to extend this franchise today, and both sides should realize that it just uh, is not done by the end of this week, that there is a very good possibility that there will not be a franchise for Yellow Cab, it will lapse, it will be open to other companies and I just think that this kind of information should be put out in the open, so everybody understands it. If we don't do something by, we have to have fact finding or not fact finding, but a finding by Friday . . .

BY MR. HAGGERTY:

Friday is the latest.

BY MR. FERRARO:

And we have to approve the ordinance by the 31st.

BY MR. HAGGERTY:

It has to be published by the 31st.

BY MR. FERRARO:

It has to be published by the 31st, Monday is the 30th. Friday there is only 5 to 10 people here, we couldn't pass

an ordinance by Friday if we, if it was unanimous on Friday, because there is only 10. Monday there will be 12 or more, so then Monday is the last day because if we pass it unanimously, send it to the Mayor's Office forthwith, we've got to get it signed. I'm just giving people a time table so that they understand what is before the council, what happens, so, I think that we could either not pass Mrs. Russell's Motion or continue this until Monday, one way or another that would be the last day we could operate to take action.

UNKNOWN:

Right on time Mr. President. That is, you've run out of time. Mr. Bernardi.

BY MR. BERNARDI:

Some questions raised about the operation has to do with the $6,500.00, the bankruptcy situation, and I think another item or two. Mr. Howry how are we involved in that?

BY MR. HOWRY:

Basically on the 60, so called $6,500.00, we consider that a legal matter, the Board in passing a rate increase last year indicated that it should be flowed through to the drivers until the end of the Teamsters drivers contract, which was October 10th or 13th, I forget which of those two dates.

BY MR. BERNARDI:

And it wasn't?

BY MR. HOWRY:

It was until that date and for some weeks after that, but subsequently apparently Mr. Mayday determined that the time had run and there was no contract so he ceased paying the fee that was supposed to end at the time and

be negotated out in their new contract. The Transportation Commission subsequently took action saying that that flow-through should be continued but there is a legal question and dispute between the parties as to whether or not they had the authority to do that retroactively. To cover the time from the time it is originally terminated until the time that they took action asking that the flow-through be continued.

BY MR. BERNARDI:

The flow-through had been paid to the drivers up to what date?

BY MR. HOWRY:

Uh, I'm not . . . I, I believe uh, about the end of October.

BY MR. BERNARDI:

By the end of October. They've been working without a contract since the end of October?

BY MR. HOWRY:

They had contract extensions, but the date that allows the flow-through to th . . . there was . . .

BY MR. BERNARDI:

The contract was extended, wouldn't that automatically apply as well to the other conditins (sic)?

BY MR. HOWRY:

No sir, because that fee was based on the flow-through to the drivers was based on a specific date.

BY MR. BERNARDI:

Wasn't it also based on the specific permission to increase the cab fare?

BY MR. HOWRY:

Yes sir, but the intent of the Commission was that that would be renegotiated at the time of the contract termination.

BY MR. BERNARDI:

If the Commission didn't anticipate that there would be a strike.

BY MR. HOWRY:

No, sir, if the, if that had been anticipated it would have been made continuous so long as there was any kind of agreement between the parties.

BY MR. BERNARDI:

But the contract was continued, was extended, it was a question then of whose position you take as to whether that should have included the flow-through or not.

BY MR. HOWRY:

We don't believe that we should take a position we think that that's a legal matter as to the interpretation.

BY MR. BERNARDI:

What about the other . . .

BY MR. HOWRY

. . . until it's resolved by negotiation.

BY MR. BERNARDI:

Wasn't there something else that was raised about abankruptcy (sic)?

BY MR. HOWRY:

That's something that Mr. Morris has indicated, that anattorney (sic), who had worked for Mr. Mayday had

filed involuntary bankruptcy to collect from fees that he claimed he had not paid.

BY MR. BERNARDI:

Has the owner of the company been retaining what was supposed to be the flow-through since October, since the end of October? Apparently if the cab drivers haven't been getting it, then he's been retaining it.

BY MR. HOWRY:

It's been terminated when the uh. . .

BY MR. BERNARDI:

I understand, but if it didn't reduce the fares. We didn't reduce the fares when that terminated.

BY MR. HOWRY:

They haven't been operating from February 11th.

BY MR. BERNARDI:

Since October when the contracts expired, they haven't been paying the cab drivers that flow-through?

BY MR. HOWRY:

The Board took action sometime in November, I believe ordering that that flow-through be paid to the drivers. I believe that from that time forward it had been paid to them until they terminated. I think there was a gap in there.

BY MR. BERNARDI:

From October to November? Since November you say the cab drivers have been getting the flow-through?

BY MR. HOWRY:

It is my understanding that they have.

BY MR. BERNARDI:

Is it true or not true? May I ask them that question?

UNKNOWN:

It was reinstated during the two week period which involves $6,500.00 which the National Labor Relations Board found was the basis for a complaint issued by them because they did not continue to pay to the drivers as they were required to do under Federal law. And also the Labor Commissioner found that $500.00 was due.

BY MR. BERNARDI:

When did they pay it, just for a few weeks then?

UNKNOWN:

They continued it after the Board Commission ordered it, they did not restore the two weeks which they had taken out.

BY MR. BERNARDI:

So just two weeks, there is a gap of two weeks, they had been paying it up until the time that the work stoppage.

UNKNOWN:

That's right. The $6,500.00 they did not pay.

BY MR. BERNARDI:

I recall that that Mr. Ferraro pointed out, I believe when the first period before the City Council with strong support from the Teamsters that we granted them permission to put 100 was it 100 and how many cabs on the street.

BY MR. HOWRY:

I don't recall that history.

BY MR. BERNARDI:

Oh, there was a, Mr. Haggerty, therewas (sic) a limit on the number of cabs, was it 150?

BY MR. HOWRY:

They have 300 authorized at the time of the ceiling was eliminated.

BY MR. BERNARDI:

Well, I'm trying to, I think there were 3 different actions that the Council took.

BY MR. HAGGERTY:

I believe the actions were to the best of my recollection when the franchise was assigned for the bankrupt company pursuant to the bankruptcy proceedings to Mr. Mayday (sic), the maximum was 150, but the ordinance specifically provided by resolution that Council could increase . . .

BY MR. BERNARDI:

So it was 150. Subsequent that we increase it to what 300?

BY MR. HAGGERTY

To 300.

BY MR. BERNARDI:

And then another action was taken to remove any restrictions . . .

BY MR. HAGGERTY:

Thats (sic) correct . . .

BY MR. BERNARDI:

. . . and I think all through this didn't the independent cabs, weren't they concerned about what the impact this would have on their operation?

BY MR. HAGGERTY:

Well, I believe the action to remove all restrictions on Yellow Cab as to a maximum, in other words, the last action taken by the council was on condition that the Board likewise would remove any restrictions on the limits on the independent associations because they also had a . . .

BY MR. BERNARDI:

It was sweetened to that extent, was it? And the independent cabs, haven't they limited, I think they have limited to a number of members that they have. Is that correct?

BY MR. HAGGERTY:

Up to, I don't know what the present status is, but I know a few months ago that there was a self-imposed limit by the associations, I don't know actually what the present condition is now, maybe somebody can . . .

BY MR. BERNARDI:

Let, let, me say this, we've been, we're being excused and we will be excused I guess from, every angle if we continue this for another 30 days, we will be accused of being on the side of the, of the owner of Yellow Cab, if we refuse to continue, then we are accused of being on the side of the cab drivers, I don't know how having them stay out of work would be on their side, they are going to be out of a job. But, I, I, think this really is a position we've got to take and uh, would be to remain neutral. We have until when the 30th? We . . . 12 votes you can adopt. . .

BY MR. HAGGERTY:

No, not in the case of granting a franchise. There is no ordinance, the charter specifically prohibits . . .

BY MR. BERNARDI:

Alright so when is the date? Is Monday the last day?

BY MR. HAGGERTY:

Well, it has to be published on Tuesday and the question of whether or not the council could act on Tuesday, the Mayor sign, and then get published on Tuesday, I don't know.

BY MR. BERNARDI:

If the council were to act on Tuesday and published on Tuesday, forthwith to the Mayor, then it would be, there would still be time.

BY MR. HAGGERTY:

The finding has to be made by Friday at the latest.

BY MR. BERNARDI:

I, I'm going to vote to remain neutral so I'm going to have to vote against Mrs. Russell's extension.

BY MR. EUGENE MADAY

Mr. Bernardi, I'd like to answer your question in regards to the flow-through situation if I may please?

BY MR. FERRARO:

Mr. Barnardi, . . . alright, go ahead Mr. Mayday (sic).

BY MR. MADAY:

What happened with the flow-through at the request of the Teamsters, the city granted the drivers two differ-

ent flow-throughs; one flow-through ran out approximately October 31; and the other one continued. When I say run out, by ordinance the flow-through was supposed to go to October 31st. We were in doubt as to how to handle it, we contacted the Transportation Department, they say "as of this date you cease paying the first flow-through but you must continue to pay the second". So we ceased paying the first flow-through and we gave the drivers 50% of the commission instead, we figured in them both. Consequently, a few weeks later another ordinance was adopted reinstating the flow-through so you had a period of approximately two or three weeks where the one flow-through had run out, and then it was reinstated two or three weeks later and this is where the confusion came in on the flow-through. And since then they have been getting all the flow-throughs and during that period of time they got 50% commission on that amount.

BY MR. FERRARO

Alright, Mr. Braudie.

BY COUNSELMAN BRAUDIE:

(Unintelligable) the entire matter.

BY MR. FERRARO:

Alright, is there anyone else who wants to speak, before Mrs. Russell closes? Alright Mrs. Russell, to close.

BY COUNSELWOMAN RUSSELL:

Mr. President, members, I appreciate . . . I want to sum up saying I did bring in the Motion today because I wanted to give the council the choice since Mr. Ferraro so graciously (unintelligible)) and the Transportation Committee. I have tried to give the council a choices as we've gone on some of these tough decisions. The uh, so that really is the reason to have that Motion

before you today. Mr. Bernardi indicated he wanted to be neutral. I think that we would like to neutral in terms of the labor disputes and with my efforts to give us some more ties for study and reports in the Department and discussions. Unfortunately, it like Heisenberg's principle there are times when you simply by observing, you do effect events, and I think that is the case on this one, and that we will not be seen to be neutral even if those are our motivations. As has been indicated at the center table and by Mr. Ferraro's comments, we are really in a very sharp time bind and we could indeed take an action on the ordinance on Monday if there was 12 unanimous votes, but we could not, it would be meaningless to do that unless we made the findings on Friday. And the time bind really has been the march of events on the council. I am not unhappy with the comments that have been made in the views that they would vote against my Motion, as I say I wanted to do a fair procedure. I really do appreciate the tenor of the comments of the council because they have not been in terms of choosing up sides, but in terms of what would be the best public service. So along that line again, I want to reiterate to the members of council I will have a Motion tomorrow which will instruct the Department to study then impact and report back to us. Some of the comments that have been made by the members and indicated the number of cabs on the street and we have all watched that, what the impact is. There has not been an outcry because of the lack of service during the strike and we are looking at numbers, it could be that in negotiating a new franchise that the numbers could be changed and could be better in terms of public service. The existing franchise doesn't pick up again, Mr. Mayday (sic) could bid in again or somebody else could change the numbers. There really are a lot a choices that can be made and I think we want to make these choices on the basis of the factual information we will get from the department and on the basis of being as neutral

aswe (sic) can in terms of the impact on the parties, so I will vote for my Motion which I brought for procedural means, and hope that we will be able to follow good procedures in the future.

BY MR. FERRARO:

We have 14A before us. Prepare the roll. Tabulate the vote.

BY THE SECRETARY OF THE COUNSIL (sic):

2 ayes, 2 nos, uh, excuse me, 2 ayes, 10 yeses (uninteligable)

BY MR. FERRARO:

Alright, that Motion failed to pass, I can assure you that. The next item. Well, I think 14A was a substitute for 14, Mrs. Russell. It was just to notify that it was on the agenda. Mr. Gibson.

BY MR. GIBSON:

My vote was no on that, I don't know. . .

BY MR. FERRARO:

Alright let the record be corrected. Next item.

UNKNOWN:

Mr. President the following additional matters are on the dais.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

EXHIBIT A TO DEFENDANT'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO MOTION FOR TEMPORARY RESTRAINING ORDER

CITY OF LOS ANGELES ORDINANCE NO. 146,496

An Ordinance granting YELLOW CAB COMPANY OF CALIFORNIA a taxicab franchise upon certain streets in the City of Los Angeles whereas the following facts appear.

The City of Los Angeles has heretofore granted by ordinance a taxicab franchise in the City of Los Angeles to the YELLOW CAB COMPANY OF CALIFORNIA.

The Board of Public Utilities and Transportation, pursuant to Subsection (8) of Section 3 of the Charter of the City of Los Angeles, has recommended that the City grant to the holder of such franchise a new franchise to replace such franchise heretofore granted, and no reason appears why such new franchise should not be granted; NOW, THEREFORE,

THE PEOPLE OF THE CITY OF LOS ANGELES DO ORDAIN AS FOLLOWS:

DRAFT OF FRANCHISE RENEWALS

DEFINITIONS

Sec. 1. Unless it is apparent from the context that it has a different meaning, each of the following words and phrases has the meaning herein stated whenever it is used in this franchise, that is:

Board: The Board of Public Utilities and Transportation of the City.

City: City of Los Angeles, State of California, in its governmental capacity.

Franchise Property: All property installed, used or maintained in or upon the public streets pursuant to any right or privilege granted by this franchise.

Grantee: The person, firm, or corporation to whom this franchise is awarded and granted by the City Council and any person, firm, or corporation to which it may hereafter be lawfully transferred as herein provided.

Street: The portion of any public street, road, highway, freeway, lane, alley, court, sidewalk, parkway, or public place which now exists or which may hereafter exist within the City.

Taxicab: Any motor vehicle equipped with a taximeter, operated in streets of this City by or for the Grantee for the transportation of persons for hire at the direction of the passengers and not over a defined route.

Taximeter: An instrument for indicating and recording charges for taxicab services in proportion to distance traveled, waiting time, or both.

Taxicab Zone: The portion of a street area designated for the standing of taxicabs while awaiting employment.

FRANCHISE GRANT

Sec. 2.1. NATURE AND EXTENT OF GRANT

The franchise hereby granted by the City authorizes the Yellow Cab Company of California subject to the provisions herein contained, to conduct a public transportation business by taxicab, in the City, that is, a franchise to pick up persons by taxicab in any street within the franchise area herein described and to transport such persons, for hire, over any street within the City and to stand taxicabs at designated taxicab zones within said franchise area.

Sec. 2.2 DURATION OF GRANT

This franchise shall be effective on the thirty-first (31) day after the publication of the enacting ordinance, provided the Grantee has filed with the Board, within twenty (20) days after such date of publication, a written instrument, addressed to the Council accepting this franchise and agreeing to comply with all of the provisions hereof.

This franchise shall expire October 29, 1980, unless sooner terminated by ordinance, in the event, (a) the Council finds that the Grantee has failed to comply with any material provision hereof; (b) any provision hereof becomes invalid or unenforceable and the Council expressly finds that such provision constituted a consideration material to the grant of this franchise.

The right of the City to revoke or terminate this franchise pursuant to the terms of this Section shall be in addition to all other rights and remedies which may otherwise accrue to the City by reason of any failure or refusal of the Grantee to perform any obligation imposed by the terms of this franchise.

Sec. 2.3 DESCRIPTION OF FRANCHISE AREA

The franchise area referred to in Sec. 2.1 hereof is the area of the City described as follows:

(a) Primary Service Area as described in Sec. 2.4 hereof. The Los Angeles International Airport subject to the provisions of this franchise and to any additional conditions that may be prescribed by the Board of Airport Commissioners.

(b) The City to its boundaries or any portion thereof, except areas defined in (a) herein, for pick up on a telephone order or a referred order subject to the provisions of this franchise and to any additional conditions that may be prescribed by the Board.

The City boundaries referred to are as existing at the date of the award of this franchise, according to the official records of the City Engineer.

Sec. 2.4 DESCRIPTION OF PRIMARY SERVICE AREA

The Primary Service Area is the area of the City described as follows:

All of the area of the City lying between the southerly line of Alondra Boulevard on the south and a line on the north described as follows:

Beginning at a point on the westerly boundary of the City at its intersection with the common boundary of the San Fernando and Westgate Annexations; thence, easterly along said common boundary and northerly line of Mulholland Drive to the Hollywood Freeway, northerly along the Hollywood Freeway to a point due south of the southernmost tip of Universal City, due north to the City boundary at Universal City, northeasterly along this boundary and the common boundaries of the City of Los Angeles and the Cities of Burbank, Glendale, Pasadena, and South Pasadena.

The streets referred to in this Section are as existing on the effective date of this franchise, according to the official records of the City Engineer.

CONSTRUCTION OF FRANCHISE

Sec. 3.1 INTERPRETATION

Unless otherwise specifically prescribed herein the following provisions shall govern the interpretation and construction of this franchise:

(a) The singular number includes the plural, and the plural number includes the singular.

(b) Time is of the essence of this franchise. The Grantee shall not be relieved of its obligation to promptly comply with any provision hereof by any failure of the City to enforce prompt compliance with the same, or any other provisions.

(c) Any right or power conferred, or duty imposed upon any officer, employee, department, or board of the City, is subject to transfer by operation of law to any other officer, employee, department or board of the City.

(d) The Grantee shall have no recourse whatsoever against the City for any loss, cost, expense, or damage, arising out of any provision or requirement of this franchise, or the enforcement thereof.

(e) This franchise does not relieve the Grantee of any requirement of the City Charter or any ordinance, rule, regulation or specification of the City.

(f) This franchise shall not constitute any exclusive grant of any right to carry persons or property for hire within the City or any portion thereof.

Sec. 3.2 LIMITATIONS UPON GRANT

(a) No privilege or exemption is granted or conferred by this franchise except those specifically prescribed herein.

(b) Grantee shall not permit any right or privilege granted by this franchise to be exercised by another, nor shall this franchise or any interest therein or any right or privilege thereunder be in whole or in part sold, transferred, leased, assigned, or disposed of, either by merger or consolidation, or otherwise, without the consent of the City expressed by ordinance; provided, however, that the provisions of this franchise shall not require any such consent and no consent shall be required for any transfer by Grantee in trust or by way of mortgage or hypothecation covering all or any part of Grantee's property, which transfer, mortgage or hypothecation shall be for the purpose of securing an indebtedness of Grantee or for the purpose of renewing, extending, refunding, retiring, paying or cancelling in whole or in part any such indebtedness at any time or from time to time. Any consent of the City hereunder shall be subject to such

terms and conditions as may be recommended by the Board unless otherwise determined by the City Council in the manner provided in Ordinance No. 58,200, as amended, with respect to grants of franchise. Any such sale, lease, assignment or other disposition of franchise for which consent of the City is required hereunder shall be evidence by a duly executed instrument in writing addressed to the City Council and filed with the Board.

(c) Grantee shall not install, construct, or maintain any property in the public streets or public place within the franchise area unless in each instance the Board shall first determine that such property is reasonably necessary to the conduct of the taxicab business authorized by this franchise.

Sec. 3.3 RIGHTS RESERVED TO CITY

(a) There is hereby reserved to the City every right and power which is required to be herein reserved or provided by any provision of the City Charter or Ordinance No. 58,200 as amended, and the Grantee by its acceptance of this franchise agrees to be bound thereby and to comply with any action or requirement of the City in its exercise of any such rights or power.

(b) Neither the granting of this franchise nor any provision hereof shall constitute a waiver or bar to the exercise of any governmental right or power of the City.

OPERATIONS AND SERVICE

Sec. 4.1 ESTABLISHMENT AND ABANDONMENT OF SERVICE

When the Grantee shall have been authorized by this franchise to furnish transportation service, such transportation service shall be provided by the operation of a fleet of taxicabs consisting of at least 300 vehicles and such minimum service shall be in force within 180 days

from the effective date of this franchise or unless an extension is granted by the Board after public hearing.

After the Grantee shall have established any transportation service pursuant to this franchise such service shall not be suspended or abandoned unless such suspension or abandonment be authorized or ordered by the Board.

The Grantee shall not refuse to accept any passenger in the Primary Service Area or Los Angeles International Airport for transportation, for hire, by taxicab to any destination to and at which the Grantee may legally transport and discharge such passenger, unless the attitude or condition of the passenger is such that it would not be in the public interest for the Grantee to accept such passenger.

Whenever the Grantee shall file with the Board a written application alleging that public convenience and necessity no longer require that the Grantee furnish transportation service as authorized or required by, or pursuant to, this franchise, in any part or all of the franchise area, the Board shall, at a public hearing take evidence upon that question and shall make a finding with respect thereto. Notice of such hearing shall be given for a period of fifteen (15) days prior thereto, by posting such notice in each of the taxicabs in service in the area affected: such notices, in a form satisfactory to the Board, to be posted by the Grantee. If the Board shall find that public convenience and necessity no longer require that the Grantee furnish such transportation service, then the Board may, after hearing as provided herein, authorize suspension or abandonment of such service upon such reasonable terms and conditions as may be prescribed by the Board.

Sec. 4.2 OPERATIONS OF GRANTEE

All vehicles, equipment and appurtenances used under this franchise shall be operated and maintained in ac-

cordance with the laws of the State of California, ordinances of this City and orders of the Board.

All taxicabs used by the Grantee within the City shall be operated under and pursuant to the provisions of this franchise and not otherwise.

The number of taxicabs operated pursuant to this franchise; the manner and time of all operations, the transportation service provided, and the rates or fares charged shall at all times conform to such regulations as shall from time to time be fixed or prescribed by the City and/or Board.

The Board may require the franchise Grantee to establish an appropriate order referral interconnect, telephone loop with other franchise Grantees.

Sec. 4.3 PUBLIC LIABILITY INSURANCE OR BOND

Grantee must at all times fully comply with all insurance or bond requirements as set forth in Section 71.13 of the City Municipal Code.

COMPENSATION AND GUARANTEE TO CITY

Sec. 5.1 PAYMENTS TO CITY

By its acceptance of this franchise, the Grantee agrees to pay to the City, quarter annually, (a) Five dollars ($5.00) for each taxicab used for the transportation of persons for hire in any street within the franchise area at any time during such quarter annual, payment period, and (b) a percentage of the total gross receipts of the grantee, as herein specified, from transportation of persons or from any other operations under this franchise.

The percentage to be used under (b) above shall be determined by adding the appropriate Payment Percentage Increments shown in Schedules I and II, to 1.00%. The Payment Percentage Increments applied to the total

gross receipts shall be calculated from the sum of the following schedule based on the Grantee's level of service. The level of service shall be measured by the percent of calls answered within 45 seconds and the percent of telephone orders responded to within 15 minutes within the Primary Service Area.

SCHEDULE I

TELEPHONE ANSWERING TIME

Percent of Calls for Service Answered Within 45 Seconds	Payment Percentage Increment
More than 85%	0%
85% to more than 80%	0.1%
80% to more than 75%	0.2%
75% and below	0.3%

SCHEDULE II

TELEPHONE ORDER RESPONSE TIME

Percent of Orders Responded to Within 15 Minutes *	Payment Percentage Increment
More than 76%	0%
76% to more than 73%	0.1%
73% to more than 70%	0.3%
70% and below	0.7%

* Applies to orders responded to within Primary Service Area only.

The level of service shall be determined by the Board of Public Utilities and Transportation based on the results of service tests conducted by the Department of Public Utilities and Transportation and presented at a public hearing.

Service tests shall consist of a series of not less than one hundred tests over the seven days of the week for each of the two factors used to determine the percentage. The testing as defined herein shall be conducted at least once each year. A test shall consist of a telephone

request for service to be provided from specific location and at a specific time within the Primary Service Area.

Telephone answering time shall be measured from the time the call is placed until it is answered by grantee. Response time shall be measured from the time the order is accepted by grantee until a cab arrives at the requested location. Each service test call location, time of day and day of week shall be selected at random from the actual tripe operated in the Primary Service Area by grantee during the preceding six month period.

The percentage used in calculating the quarterly annual payments shall be determined by the Board after public hearing and shall apply to the gross receipts for the period of operation during which the determination is made and each succeeding period thereafter until the Board establishes a new percentage.

The amount of any payment based on gross receipts in excess of 1% of gross receipts shall not be allowed as franchise payment expense for rate making purposes.

For the purpose of determining the amount of quarter annual payments to be made, the full cash value of any consideration reserved by the Grantee in a form other than cash shall be included in the gross receipts. Receipts from the sale of script, tickets, and passes, and from all contracts by the terms of which the Grantee agrees to furnish transportation shall be deemed to be receipts arising from the transportation of persons; whether or not such transportation be actually furnished.

Checks for all such payments shall be made payable to the City Treasurer, shall be submitted to the Board within thirty (30) days after the payment period, and shall be accompanied by a statement in duplicate, verified by the oath of the Grantee or by a responsible general officer of the Grantee showing in such form as shall be prescribed from time to time, by the Board, the facts ma-

terial to a determination of the amount due, including a list of all taxicabs owned or under the control of, the Grantee at anytime during the payment period.

The payment made to the City pursuant to this Section or any period shall be in lieu of any license fee or business tax now or hereafter prescribed by the City Municipal Code for taxicabs operated pursuant to this franchise during said period.

The use of the service test and its results to determine franchise payment shall not preclude in any way the Board's use of the same service test results or any other test, investigation or study in determining Board actions regarding its power to regulate raises and services.

Sec. 5.2 FAITHFUL PERFORMANCE BOND

Within five (5) days after the award of this franchise the Grantee shall file with the Board an acceptable corporate surety bond in duplicate, effective for the entire term of the franchise, running to the City in the penal sum of Sixty Thousand Dollars ($60,000) to be approved by the City Council, conditioned that the Grantee shall well and truly observe, fulfill and perform each and every term and condition of this franchise except the obligations imposed on the Grantee in Section 4.3 of this franchise, and that:

(a) If the Grantee shall fail to observe, fulfill and perform any term or condition fixed or prescribed by or pursuant to Sections 5.1 or 5.3 of this franchise, then any damage to the City caused by such failure shall be recoverable jointly and severally from the principal and sureties named in such bond; and

(b) If the Grantee shall fail to observe, fulfill and perform any term or condition fixed or prescribed by, or pursuant to, any Section of this franchise, then the whole amount of the penal sum named in such bond shall be

taken and deemed to be receivable jointly and severally from the principal and sureties named in such bond.

If, at anytime during the term of this franchise, the condition of the corporate surety shall change in such manner as to render the bond unsatisfactory to the City the Grantee shall replace such bond by a bond of like amount and similarly conditioned, issued by a corporate surety satisfactory to the City.

In the event the Grantees obligations under this franchise shall so warrant, the Board, from time to time, may authorize or require appropriate adjustments in the amount of the Bond.

Sec. 5.3 INDEMNIFICATION TO CITY

The Grantee shall keep and hold the City, its officers and employees, free and harmless from any and all claims, costs, liability, damages or expenses (including costs of suit and fees and expenses for legal services on account of any damages, claimed by any third party, including such claims by agents or employees of the City or of the Grantee, to have been sustained in or about any taxicab zone established or maintained by or for the Grantee, or in or about any of the Grantee's premises, or arising out of the Grantee's operations, as a result of anything claimed to have been done or omitted to be done by the Grantee or by anyone claiming or acting under it.

Sec. 5.4 INSPECTION OF PROPERTY AND RECORDS

At all reasonable times, the Grantee shall permit any duly authorized officer or employee in the classified service of the City to examine all property of the Grantee, whether such property be situated within or without the City, and to examine and transcribe any and all books, accounts, papers, maps and other records kept or maintained by the Grantee or under its control which treat of the operations, affairs, transactions, property or financial condition of the Grantee, including those which treat of the operations and property of the Grantee outside the City. If any of the books, accounts, papers, maps or other records referred to in this Section are kept outside the City and if the Board shall determine that an examination thereof is necessary or appropriate to the performance of any of its duties, then all travel and maintenance expense necessarily incurred in making such examination shall be paid by the Grantee.

The Grantee shall prepare and furnish to the Board, at the times and in the form prescribed by the Board, such reports, with respect to his operations, affairs, transactions, property or financial condition, as may be reasonably necessary or appropriate to the performance of any of the duties of the Board.

A copy of every application, petition, and schedule, and all amendments thereof, concerning rates and service within the City filed by the Grantee with any regulatory agency of the State of California, shall within one day thereafter, be filed with the Board.

Sec. 1. The City Clerk shall certify to the passage of this ordinance and cause the same to be published in some daily newspaper printed and published in the City of Los Angeles.

I hereby certify that the foregoing ordinance was passed by the Council of the City of Los Angeles, at its meeting of August 28, 1974.

REX E. LAYTON
City Clerk.

By M. B. Wilson, Deputy

Approved September 5, 1974.

JOHN S. GIBSON, JR.
Acting Mayor

File No. 74-1222

(J91979) Sept. 26 it

EXHIBIT B

CITY OF LOS ANGELES ORDINANCE NO. 149,825

ORDINANCE NO. 149825

An ordinance consenting to the assignment by Yellow Cab Company of California of the franchise granted by ordinance and amendments herein prescribed.

WHEREAS, by Ordinance No. 146,496, approved September 5, 1974, the City of Los Angeles granted to Yellow Cab Company of California a taxicab franchise providing service to Master Plan Primary Areas B (West Los Angeles), C (Central), and D (South Central) in the City of Los Angeles, and

WHEREAS, the assets of Yellow Cab Company of California have been purchased by Golden State Transit Corporation, a California corporation, dba Los Angeles Yellow Cab, and

WHEREAS, application has been made to the City of Los Angeles for its consent to the assignment and transfer of the franchise granted by Ordinance No. 146,496 to Golden State Transit Corporation, a California corporation, dba Los Angeles Yellow Cab, and no reason appears why such consent should not be given upon the terms and conditions stated herein.

NOW, THEREFORE,

THE PEOPLE OF THE CITY OF LOS ANGELES DO ORDAIN AS FOLLOWS:

Section 1. Section 2.3 of Ordinance No. 146,496 is amended to read as follows:

Sec. 2.3 DESCRIPTION OF FRANCHISE AREAS

The franchise areas referred to in Section 2.1 hereof are the areas of the City described as follows:

(a) Primary Service Areas B, C and D, as described in Section 2.4 hereof. The Los Angeles International Air-

port subject to the provisions of this franchise and to any additional conditions that may be prescribed by the Board of Airport Commissioners.

(b) The City to its boundaries or any portion thereof, except areas defined in (a) herein, for pick up on a telephone order or a referred order subject to the provisions of this franchise and to any additional conditions that may be prescribed by the Board.

City boundaries referred to are as existing at the date of the award of this franchise, according to the official records of the City Engineer.

Section 2. Section 2.4 of Ordinance No. 146,496 is amended to read as follows:

Sec. 2.4 DESCRIPTION OF PRIMARY SERVICE AREAS

The Primary Service Area B is the area of the City described as follows:

Beginning at a point on the westerly boundary of the City at its intersection with the common boundary of the San Fernando and Westgate Annexations, thence easterly along said common boundary to Mulholland Drive, easterly along the northerly line of Mulholland Drive to easterly line of Bowmont Drive, southerly along Bowmont Drive to the City boundary, southerly and westerly along the City boundary to the easterly line of La Cienega Boulevard near Olympic Boulevard, southerly along La Cienega Boulevard to the Santa Monica Freeway, easterly along the Santa Monica Freeway to the southerly line of Washington Boulevard, southwesterly along Washington Boulevard to the City boundary, southwesterly along the City boundary to the easterly line of Overhill Drive near 63rd Street, southerly along Overhill Drive to the City boundary, westerly and southerly along the City boundary to the Pacific Ocean, northwesterly along the shoreline to the City boundary west of Castellamare, and northerly along the City boundary to the point of beginning.

The Primary Service Area C is the area of the City described as follows:

Beginning at the intersection of the northerly line of Mulholland Drive with the westerly line of Bowmont Drive; easterly along Mulholland Drive to the Hollywood Freeway, northerly along the Hollywood Freeway to a point due south of the southermost tip of Universal City, due north to the City Boundary at Universal City, northeasterly along the City boundary to the Los Angeles River near 25th Street, northerly along the Los Angeles River to the Santa Monica Freeway, westerly along the Santa Monica Freeway to the westerly line of La Cienega Boulevard, northerly along La Cienega Boulevard to the City boundary near Olympic Boulevard, northeasterly along the City boundary to the westerly line of Bowmont Drive, and northerly along Bowmont Drive to the point of beginning.

The Primary Service Area D is the area of the City described as follows:

Beginning at a point on the common boundary of the cities of Los Angeles and Culver City at its intersection with the northerly line of Washington Boulevard; thence northeasterly along Washington Boulevard to the Santa Monica Freeway, easterly along the Santa Monica Freeway to the Los Angeles River, southerly along the Los Angeles River to the City boundary near 25th Street, westerly and southerly along the City boundary to the southerly line of Alondra Boulevard, westerly along Alondra Boulevard to the City boundary, northerly and westerly along the City boundary to the westerly line of Overhill Drive near 63rd Street, northerly along Overhill Drive to the City boundary, and easterly and northerly along the City boundary to the point of beginning.

The streets referred to in this Section are as existing on the effective date of this franchise, according to the official records of the City Engineer.

Section 3. The first paragraph of Section 4.1 of Ordinance No. 146,496 is amended to read as follows:

Sec. 4.1 ESTABLISHMENT AND ABANDONMENT OF SERVICE

When the Grantee shall have been authorized by this franchise to furnish transportation service, such transportation service shall be provided by the operation of a fleet of taxicabs consisting of at least 150 vehicles and such minimum service shall be in force within 180 days from the effective date of this franchise or unless an extension is granted by the Board after public hearing, provided however that the maximum number of taxicabs to be operated shall not exceed 150 taxicabs until such time as the Council, by resolution, modifies or deletes this maximum limitation, or, maintains it, upon report to it by the Board to be submitted no later than immediately following the first Board meeting in February, 1978.

Section 4. Section 4.3 of Ordinance No. 146,496 is amended to read as follows:

Sec. 4.3 PUBLIC LIABILITY INSURANCE OR BOND

Grantee must at all times fully comply with all insurance or bond requirements as set forth in Section 71.14 of the City Municipal Code.

Section 5. Section 5.1 of Ordinance No. 146,496 is amended to read as follows:

Sec. 5.1 PAYMENTS TO CITY

By its acceptance of this franchise, the Grantee agrees to pay to the City, quarter annually, (a) Five dollars ($5.00) for each taxicab used for the transportation of persons for hire in any street within the franchise area at any time during such quarter annual payment period, and (b) a percentage of the total gross receipts of the grantee, as herein specified, from transportation of persons, or from any other operations under this franchise.

The percentage to be used under (b) above shall be determined by adding the appropriate payment percentage increments shown in Schedule I and II to 1.00%. The payment percentage for each of the Primary Service Areas shall be calculated separately. The payment percentage increment to be applied to the total gross receipts shall be the sum of the percentages determined from the following Schedules based on the Grantee's level of service for that Primary Service Area which results in the highest percentage.

The level of service shall be measured by the percent of calls answered within 45 seconds and the percent of telephone orders responded to within 15 minutes within the Primary Service Area.

SCHEDULE I

TELEPHONE ANSWERING TIME

Percent of Calls for Service Answered Within 45 Seconds	Payment Percentage Increment
More than 85%	0%
85% to more than 80%	0.1%
80% to more than 75%	0.2%
75% and below	0.3%

SCHEDULE II

TELEPHONE ORDER RESPONSE TIME

Percent of Orders Responded to Within 15 Minutes *	Payment Percentage Increment
More than 76%	0%
76% to more than 73%	0.1%
73% to more than 70%	0.3%
70% and below	0.7%

* Applies to orders responded to within Primary Service Area only.

The level of service shall be determined by the Board of Public Utilities and Transportation based on the results of service tests conducted by the Department of

Public Utilities and Transportation and presented at a public hearing.

Service tests shall consist of a series of not less than one hundred tests over the seven days of the week for each of the two factors used to determine the percentage. The testing as defined herein shall be conducted at least once each year. A test shall consist of a telephone request for service to be provided from a specific location and at a specific time within the Primary Service Area.

Telephone answering time shall be measured from the time the call is placed until it is answered by grantee. Response time shall be measured from the time the order is accepted by grantee until a cab arrives at the requested location.

The percentage used in calculating the quarterly annual payments shall be determined by the Board after public hearing and shall apply to the gross receipts for the period of operation during which the determination is made and each succeeding period thereafter until the Board establishes a new percentage.

The amount of any payment based on gross receipts in excess of 1% of gross receipts shall not be allowed as franchise payment expense for rate making purposes.

For the purpose of determining the amount of quarterly annual payments to be made, the full cash value of any consideration received by the Grantee in a form other than cash shall be included in the gross receipts. Receipts from the sale of scrip, tickets and passes and from all contracts by the terms of which the grantee agrees to furnish transportation shall be deemed to be receipts arising from the transportation of persons and goods, whether or not such transportation be actually furnished.

Checks for all such payments shall be made payable to the City Treasurer, shall be submitted to the Board within thirty (30) days after the payment period, and shall be

accompanied by a statement in duplicate, verified by the oath of the Grantee or by a responsible general officer of the Grantee, showing in such form as shall be prescribed from time to time by the Board, the facts material to a determination of the amount due, including a list of all taxicabs owned or under the control of the Grantee at any time during the payment period.

The payment made to the City pursuant to this Section for any period shall be in lieu of any license fee or business tax now or hereafter prescribed by the City Municipal Code for taxicabs operated pursuant to this franchise during said period.

The use of the service test and its results to determine franchise payment shall not preclude in any way the Board's use of the same service test results or any other test, investigation or study in determining Board actions regarding its power to regulate rates and services.

Section 6. Except as hereinabove amended, all the terms and conditions of Ordinance No. 146,496 shall remain in full force and effect.

Section 7. The City of Los Angeles hereby consents to the assignment and transfer by Yellow Cab Company of California to Golden State Transit Corporation, a California corporation dba Los Angeles Yellow Cab, of the franchise granted by Los Angeles Ordinance No. 146,496 as recommended herein subject to the terms and conditions of this Ordinance of Consent.

Section 8. The consent of the City of Los Angeles to such assignment is subject to the filing by Golden State Transit Corporation, a California corporation dba Los Angeles Yellow Cab, with the Board of Public Utilities and Transportation at least ten (10) days prior to the effective date of the Ordinance of Consent, in a form satisfactory to said Board and to the City Attorney, a letter of acceptance of Franchise Ordinance No. 146,496, as herein amended, and of this Ordinance of Consent, a

Corporate Surety Bond in duplicate, guaranteeing faithful performance of Franchise Ordinance No. 146,496, in the amount of Sixty Thousand Dollars ($60,000), and evidence of satisfactory Public Liability insurance.

Sec. 9. The City Clerk shall certify to the passage of this ordinance and cause the same to be published in some daily newspaper printed and published in the City of Los Angeles.

I hereby certify that the foregoing ordinance was passed by the Council of the City of Los Angeles, at its meeting of June 16, 1977.

REX E. LAYTON,
City Clerk,

By Chauncey B. Pruner, Deputy.

Approved June 17, 1977

TOM BRADLEY,
Mayor.

File No. 77-1771, 74-1222 S-8

Ordinance originally published on June 22, 1977; republished to correct clerical error.

(J83050A) Jun 27

EXHIBIT C

CITY OF LOS ANGELES ORDINANCE NO. 154,409

An Ordinance amending Ordinance No. 146,496, so as to extend the term of the taxicab franchise granted, through assignment to Golden State Transit Corporation to provide taxi service in areas B, C and D (Western, Eastern and South Central Los Angeles) of the City.

THE PEOPLE OF THE CITY OF LOS ANGELES DO ORDAIN AS FOLLOWS:

Section 1. Section 2.2 of Ordinance No. 146,496 is hereby amended by deleting "October 29, 1980" and inserting therein "December 31, 1980."

Sec. 2. All other terms and conditions of Ordinance No. 146,496, as assigned, shall remain in effect.

Sec. 3. The City Clerk shall certify to the passage of this ordinance and shall cause the same to be published once in some daily newspaper printed and published in the City of Los Angeles.

I hereby certify that the foregoing ordinance was passed by the Council of the City of Los Angeles, at its meeting of September 17, 1980.

REX E. LAYTON,
City Clerk

By Edward W. Ashdown, Deputy
Approved September 18, 1980
TOM BRADLEY,
Mayor

File No. 80-1485

(JD15043) Sept 23

CITY OF LOS ANGELES ORDINANCE NO. 154,713

An Ordinance amending Ordinance No. 146,496, as amended, so as to extend the term of the taxicab franchise granted, through assignment, to Golden State Transit Corporation to provide taxi service in Areas B, C and D (Western, Eastern and South Central Los Angeles) of the City of Los Angeles.

THE PEOPLE OF THE CITY OF LOS ANGELES DO ORDAIN AS FOLLOWS:

Section 1. Section 2.2 of Ordinance No. 146,496, as amended, is hereby amended by deleting "December 31, 1980" and inserting therein "March 31, 1981."

Sec. 2 All other terms and conditions of Ordinance No. 146,496 shall remain in effect.

Sec. 3. The City Clerk shall certify to the passage of this ordinance and cause the same to be published in some daily newspaper printed and published in the City of Los Angeles.

I hereby certify that the foregoing ordinance was passed by the Council of the City of Los Angeles, at its meeting of Nov. 19, 1980.

REX E. LAYTON, City Clerk,

By /s/ Edward W. Ashdown, Deputy.

Approved Nov. 24, 1980

/s/ Tom Bradley, Mayor.

File No. 80-1485

(JD22072) Nov 27

CITY OF LOS ANGELES ORDINANCE NO. 154,931

An Ordinance amending Ordinance No. 146,496, as amended, so as to extend the term of the taxicab franchise of Golden State Transit Corporation dba Yellow Cab Company to operate taxicabs upon certain streets in the City of Los Angeles.

THE PEOPLE OF THE CITY OF LOS ANGELES DO ORDAIN AS FOLLOWS:

Section 1. Section 2.2 of Ordinance 146,496, as amended, is hereby amended to read:

SEC. 2.2 DURATION OF GRANT

(a) This franchise shall be effective on the thirty-first (31) day after the publication of the enacting ordinance, provided the Grantee has filed with the Board, within twenty (20) days after the date of publication, a written instrument, addressed to the Council, accepting this franchise and agreeing to comply with all of the provisions hereof, and provided further that the Council, prior to the thirty-first (31) day after the above-referenced publication, has made a finding that it is in the best interest of the City to allow for such extension of the franchise.

(b) This franchise, provided it becomes effective by the occurrence of the two conditions precedent and referred to in subsection (a) above, shall expire April 30, 1981, unless sooner terminated by ordinance, in the event (i) the Council finds that the Grantee has failed to comply with or violated any provision hereof, (ii) any provision hereof becomes invalid or unenforceable and the Council expressly finds that such provision constituted a consideration material to the grant of this franchise.

(c) The right of the City to revoke or terminate this franchise pursuant to the terms of this Section shall be in addition to all other rights and remedies which may otherwise accrue to the City by reason of any failure or refusal of the Grantee to perform any obligation imposed by the terms of this franchise.

Section 2. All other terms and conditions of Ordinance No. 146,496 shall remain in effect.

Sec. 3. The City Clerk shall certify to the passage of this ordinance and cause the same to be published in some daily newspaper printed and published in the City of Los Angeles.

I hereby certify that the foregoing ordinance was passed by the Council of the City of Los Angeles, at its meeting of February 17, 1981.

REX E. LAYTON,
City Clerk

By Edward W. Ashdown, Deputy.

Approved February 19, 1981
TOM BRADLEY,
Mayor.

File No. 80-1485

DJG732) Feb 27

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Case No. 81-1519-AAH

GOLDEN STATE TRANSIT CORPORATION,
a California corporation, doing business as
Yellow Cab of Los Angeles,
Plaintiff,

vs.

CITY OF LOS ANGELES, a municipal corporation,
Defendant.

PRELIMINARY INJUNCTION ORDER

Plaintiff's application for Preliminary Injunction came on for hearing on April 13, 1981, Michael R. Mitchell and John B. Rice appearing for plaintiff and Burt Pines, City Attorney appearing through his deputy for defendant. After consideration of the pleadings, declarations and arguments of counsel, and the Court having filed its Findings of Fact and Conclusions of Law,

IT IS ORDERED, that the City of Los Angeles, its officers, agents, servants, employees, attorneys and those persons in active concert or participation with them, including but not limited to members of the Los Angeles City Council, pending the final determination of the action herein,

ARE RESTRAINED AND ENJOINED from allowing the taxicab franchise of plaintiff Golden State Transit Corporation doing business as Yellow Cab of Los Angeles to terminate or expire or treating said franchise as though it had expired, and

ARE FURTHER RESTRAINED AND ENJOINED from otherwise interfering with plaintiff's collective bargaining with plaintiff's employees, and

ARE FURTHER RESTRAINED AND ENJOINED from interfering with plaintiff's lawful operation as a franchised taxicab company, and

ARE FURTHER RESTRAINED AND ENJOINED from initiating or prosecuting any civil or criminal proceeding against plaintiff for its lawful operation as a franchised taxicab company.

IT IS FURTHER ADJUDGED, ORDERED AND DECREED that, upon consent of defendant and the Court hereby finding that it is proper and lawful, no bond under F.R.C.P. 65(c) be required to be filed by plaintiff.

Date: 4/13/81

/s/ A. Andrew Hauk
A. ANDREW HAUK
United States District Judge

Presented by: _____
MICHAEL R. MITCHELL

_____
JOHN B. RICE

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

No. 81-1519 AAH

GOLDEN STATE TRANSIT CORPORATION,
a California corporation, doing business as
Yellow Cab of Los Angeles,
Plaintiff,

v.

CITY OF LOS ANGELES, a municipal corporation,
Defendant.

PLAINTIFF'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Date: Monday, April 13, 1981

Time: 1:30 p.m.

Place: Courtroom, Honorable A. Andrew Hauk

Plaintiff's Application for Preliminary Injunction having come on for hearing April 13, 1981 before this court. The parties have presented a substantial record. After consideration of the evidence and argument of counsel, the court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. Plaintiff Golden Transit Corporation is a California corporation doing business as Yellow Cab of Los Angeles ("Yellow Cab") with its principal place of business in the City of Los Angeles.

2. Defendant City of Los Angeles ("City") is a chartered city organized and existing under the laws of the State of California.

3. In 1977, plaintiff's predecessor was in receivership. Plaintiff was assured by several persons, including at least one responsible City official, that taxicab franchise renewal was automatic and that no Los Angeles taxicab franchise had failed to be renewed. In reliance upon these representations, plaintiff purchased the assets of its predecessor and obtained City Council approval of transfer of the franchise.

4. Since 1977, Yellow Cab has operated as the largest taxicab company in Los Angeles pursuant to a City franchise which was due to expire October 29, 1980. Twelve other City taxicab franchises were due to expire on that same date. The expiration dates of all of the franchises were extended to March 31, 1981.

5. On March 30, 1981, this court granted an application of Yellow Cab for issuance of a temporary restraining order prohibiting the City from allowing its franchise to expire.

6. Yellow Cab operated pursuant to a collective bargaining agreement with its Teamster drivers. The agreement expired in October, 1980, but was renewed by interim agreements which finally expired February 11, 1981.

7. On that same date, February 11, 1981, the Los Angeles City Council was scheduled to and did meet to consider whether to renew franchises of Yellow Cab and twelve other franchises. That same day, Yellow Cab's drivers went out, and remain, on strike. A dispute exists between Yellow Cab and its drivers regarding wages and benefits.

8. Until the strike, Yellow Cab was engaged in extensive business operations in the City of Los Angeles

and at Los Angeles International Airport, and train and bus terminals, transporting passengers who were arriving from or were departing to the various states and other countries, thereby affecting interstate commerce.

9. Yellow Cab and the other franchise holders had all made timely application for renewals of their franchises. The City's Department of Transportation made a report to the City's Board of Transportation stating that plaintiff was in full compliance with all terms and conditions of its franchise, recommending long-term renewal. On September 4, 1980, and again on January 26, 1981, defendant's Board of Transportation Commissioners recommended long-term renewal of the Yellow Cab franchise to the City Council Committee on Transportation and Traffic.

10. On November 19, 1980, the City's Committee on Transportation and Traffic recommended to the full City Council that a long-term renewal franchise be granted to Yellow Cab and certain other franchises.

11. On February 5, 1981, the Joint Council of Teamsters sent letters to the Mayor and all City Council members advising them of the existence of a labor dispute between plaintiff and the Teamsters.

12. On February 11, 1981, the City Council met to consider whether to grant taxicab franchises to the thirteen applicants. It considered a report of its Transportation and Traffic Committee dated February 2, 1981 ("Report"). The Report recommended, *inter alia,* renewal franchises for four years for six franchisees, including Yellow Cab, and for one year for seven franchisees.

13. The Report also found that the six companies recommended for full-term franchises were "in compliance with all terms and conditions of their franchise, including these five conditions (a) payment of franchise fees; (b) compliance with all rules regarding leasing/contracting operations; (c) furnish waybills and dispatch rec-

ords; (d) maintain minimum number of vehicles required by franchise; and (e) compliance with Affirmative Action provisions of franchise."

14. A representative of the Teamsters appeared at the Council meeting and extensively detailed the dispute between Yellow Cab and its drivers, and recommended that Yellow Cab not receive a full franchise because of the labor dispute.

15. Thereupon, the City Council granted the recommended full-term franchises to the five other companies, but postponed consideration of Yellow Cab to February 17, 1981. The Council did, however, adopt its Committee's Report, finding that Yellow Cab and the other five companies were in full compliance with all terms and conditions of their franchises.

16. On February 17, 1981, the City Council considered whether to grant Yellow Cab a full-term four-year franchise. The Teamsters appeared and opposed the full-term grant because of Yellow Cab's labor difficulties. Thereupon, the Council granted a franchise extension only until April 30, 1981, provided that the City Council found before March 27, 1981, that the 30-day extension ordinance was "in the best interests" of the City. No other franchise grant was subject to this condition.

17. On February 17, 1981, the Teamsters told Yellow Cab that if the labor dispute was not settled, Yellow Cab was "going to have a lot of trouble" renewing the franchise.

18. On March 22, 1981, the Teamsters told Yellow Cab that the Teamsters were going to see that the Yellow Cab franchise was not going to be renewed unless union demands were met.

19. On March 23, 1981, the City Council met to consider whether it was in the "best interest" of the City to allow Yellow Cab the one month extension of its fran-

chise. The City Council invited parties to "express their views." Yellow Cab urged the Council to grant the extension to avoid intervening in the labor dispute. The Teamsters urged denial of the extension because, they contended, Yellow Cab was bargaining "in bad faith" with the drivers and that to grant a further extension would not be in the drivers' best interests.

20. The Teamster representative recited to the Council the purported "modest" demands labor was making on Yellow Cab and Yellow Cab's purported intransigence. He reported that the striking workers had voted, with only one dissent, "to endorse the position that the franchise not be extended. . ." He said he hoped that present Yellow Cab employees "would be hired by whatever successor is established" for Yellow Cab.

21. The AFL-CIO representative, representing the "brothers and sisters" of the Teamsters, reminded the Council that there are 700,000 union members in the County, claimed that Yellow Cab was acting in "bad faith," and urged denial of the franchise.

22. The municipal election is scheduled for Los Angeles on April 14, 1981 wherein numerous members of the City Council and the Mayor are standing for reelection.

23. The President of the Council stated that "it will be very difficult to get this ordinance passed to extend this franchise if the labor dispute is not settled by the end of the week. . ." and that "both sides should realize that [if] it is not done by the end of this week, that there is a very good possibility that there will not be a . . . franchise for Yellow Cab, it will lapse, it will be open to . . . other . . . companies."

24. Thereupon, the Council voted to defeat the motion which recommended that the Council find that it would be in the best interests of the City to extend the

franchise. Yellow Cab was thereby denied even a thirty-day extension of its franchise.

25. At no point in the franchise renewal proceedings was plaintiff notified that any evidentiary or fact finding hearing would be held to determine whether the franchise should be renewed. Plaintiff was never offered an opportunity to present sworn testimony, to offer admissible evidence, or to cross-examine opposing parties under oath. The only factual findings adduced were that plaintiff was in full compliance with all the terms of its franchise.

26. Under the terms of its Charter, the City was required to have adopted an ordinance of general application establishing the procedural standards for granting an individaul renewal franchise. There are no established procedural standards for renewal of taxicab franchises which Yellow Cab has failed to meet.

27. Unless the court grants the preliminary injunction requested, the status quo will change radically. Plaintiff's taxicab franchise will expire. Plaintiff's lawful right to bargain with the Teamsters will be rendered moot. Plaintiff's business will be destroyed.

28. The City has attempted substantively to influence the economic (as opposed to political) weapons of Yellow Cab and its Teamster drivers in their labor negotiation efforts, by diminishing the economic power of Yellow Cab, and increasing the economic power of the drivers. This was the City's true purpose in declining to renew plaintiff's franchise.

29. Any finding of fact which may be deemed a conclusion of law is incorporated into the Conclusion of Law section below, and any conclusion of law which may be deemed a finding of fact is incorporated in this Finding of Fact section.

CONCLUSIONS OF LAW

30. This court has jurisdiction of this action under 28 U.S.C. Section 1331 and 28 U.S.C. Section 1343 in that it arises under the Supremacy Clause of the Constitution of the United States, Article VI, Clause 2 and the Fourteenth Amendment to the Constitution, under the National Labor Relations Act, 29 U.S.C. Sections 151-68 et seq., under the Labor Management Relations Act, 29 U.S.C. Sections 141-67 and 171-97, and the Civil Rights Act, 42 U.S.C. Sections 1983, 1985 and 1986. The amount in controversy, exclusive of interest and costs, exceeds the sum of $10,000.

31. Plaintiff has raised serious questions, including but not limited to whether the conduct of the City violates the Supemacy Clause and Fourteenth Amendment due process and equal protection clauses of the United States Constitution, the National Labor Management Relations Act and the Civil Rights Act (42 U.S.C. Section 1983).

32. The actions of the City herein were and now are under color of law.

33. Denial of rights conferred by federal statute are actionable under 42 U.S.C. 1983. There is no necessity of a constitutional violation. *Maine v. Thiboutot* 100 S.Ct. 2502, 65 L.Ed.2d 555, —— U.S. —— (1980), 48 USLW 4859.

34. At a minimum, due process requires that the City could not deny the application for franchise renewal arbitrarily, capriciously, unreasonably or with no factual basis sufficient to justify the denial.

35. The City's refusal to grant Yellow Cab even a thirty-day extension, much less a four-year renewal, of its franchise by imposing a "special" requirement that the Council found it to be in the "best interest" of the City, while granting all twelve other franchise applications with no such "special" requirement, denied Yellow Cab, under color of law, of equal protectection (sic) of the laws guaranteed by the Fourteenth Amendment of the United States Constitution.

36. The City's insistence, under color of law, that Yellow Cab reach an agreement with its Teamster drivers as a condition precedent to franchise extension constituted an unlawful attempt by the State, through its chartered City, to influence the conduct of parties to collective bargaining negotiations [*Lodge 76, Machinists v. Wisconsin Employment Relations Commission*, 427 U.S. 132, 96 S.Ct. 2548, 49 L.Ed.2d 396 (1976)].

37. The City's actions, under color of law, further violated Yellow Cab's rights, codified in 28 U.S.C. Section 158(d) not to be compelled to agree to a proposal or make concessions to the Teamsters and Yellow Cab's right, codified in 28 U.S.C. Section 158(e) to be free of a secondary boycott, all in violation of 42 U.S.C. Section 1983.

38. The public policy favoring competition, as embodied in the Sherman Antitrust Act (15 U.S.C. Sections 1 and 2) would be served by granting the injunction prayed for.

39. In order to issue a preliminary injunction, three alternative tests are applied:

TEST 1:

(1) Has plaintiff shown a probability of success on the merits and

(2) Has plaintiff shown the possibility of irreparable injury?

or

TEST 2:

(3) Are serious questions raised? and

(4) Does the balance of hardships tip sharply in plaintiff's favor?

Wm. Inglis & Sons Baking Co. v. ITT Cont. Baking Co. (9th Cir., 1975) 526 F.2d 86, 88.

or

TEST 3:

(5) Has plaintiff established a strong likelihood of success on the merits?

(6) Does the balance of irreparable harm favor plaintiff? and

(7) Does the public interest favor granting the injunction?

Sierra Club v. Hathaway (9th Cir., 1978) 579 F.2d 1162, 1167.

40. Plaintiff has shown a strong likelihood of success on the merits.

41. Plaintiff has shown an absolute certainty of irreparable injury if a preliminary injunction does not issue.

42. Plaintiff has raised serious questions going to the merits of the dispute.

43. The balance of hardships and irreparable harm tips sharply in plaintiff's favor.

44. The public interest favors granting the injunction.

4/13/81 /s/ A. Andrew Hauk
A. ANDREW HAUK

ACKNOWLEDGMENT OF RECEIPT

Received copy of the within document on April 9, 1981.

/s/ Esther Nelson
(Signature)

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

No. 81-1519 AAH (GX)

GOLDEN STATE TRANSIT CORPORATION,
a California corporation, doing business as
Yellow Cab of Los Angeles,
Plaintiff,

vs.

CITY OF LOS ANGELES, a municipal corporation,
Defendant.

ANSWER TO COMPLAINT FOR TEMPORARY RESTRAINING ORDER, PRELIMINARY AND PERMANENT INJUNCTION, DECLARATORY RELIEF AND MONEY DAMAGES

COMES NOW, defendant, the City of Los Angeles, for itself and no others and answers as follows:

JURISDICTION

1. Answering paragraphs 1 and 2, denies each and every allegation contained therein, except it admits that plaintiff has alleged damages in excess of the sum of $10,000.

PARTIES

2. Answering paragraph 3, as to the first sentence which ends on line 14, page 2, defendant lacks sufficient information or belief upon which to answer said sentence and on that basis denies generally and specifically each and every allegation contained therein except that defendant admits plaintiff has done business in the City of Los Angeles. In answer to the second sentence of said

paragraph, defendant denies that plaintiff is presently a grantee of a franchise as alleged, such franchise expiring as of March 31, 1981, but further admits, pursuant to the preliminary injunction previously issued by the court, the defendant is presently enjoined from taking any action against plaintiff based on such expiration.

3. Answering paragraph 4, defendant admits the allegations contained therein.

FACTS

4. Answering paragraph 5, beginning with the word in on line 23, page 2, and ending with the word "franchise," on line 27, page 2, defendant admits such allegation and as to the rest of said paragraph, defendant lacks sufficient information or belief upon which to answer and on that basis denies generally and specifically each and every allegation contained therein.

5. Answering paragraph 6, defendant lacks sufficient information or belief upon which to answer said paragraph, and on that basis denies generally and specifically each and every allegation contained therein, except that City admits that the transfer and assignment of the franchise rights of plaintiff's predecessor to plaintiff was subject to City Council approval.

6. Answering paragraph 7, defendant lacks sufficient information or belief upon which to answer said paragraph and on that basis denies generally and specifically each and every allegation contained therein, except defendant admits that on Februery 11, 1981, plaintiff's drivers went on and remain on strike.

7. Answering paragraph 8, defendant admits the allegations contained therein, except that plaintiff did not apply for renewal of its taxicab franchise but rather for a new franchise to replace its franchise about to expire and further denies that any renewal takes effect upon expiration of the existing franchise but rather the City

may grant to the holder of an expiring franchise a new franchise to replace such franchise.

8. Admits the allegations of paragraph 9 and further alleges that the defendant's power to grant it a taxicab franchise also flows from the California State Constitution, Article 11, § 7.

9. Admits the allegations of paragraph 10, 11, 12, 13 and 14.

10. Answering paragraph 15, defendant lacks sufficient information or belief upon which to answer said paragraph, and on that basis denies generally and specifically each and every allegation contained therein.

11. Answering paragraph 16, defendant admits the allegation contained therein, except for the allegation beginning on page 6, line 14, with the word "In" and ending with the number "1981" on page 6, line 16, which allegation is denied.

12. Admits the allegations contained in paragraph 17, except that defendant denies that the committee report was adopted as to plaintiff.

13. Answering paragraph 18, defendant admits the allegations contained therein, except as to the allegation beginning with the word "This" on page 7, line 6 and ending with the word "Labor" on page 7, line 8, and as to such allegation defendant lacks sufficient information or belief upon which to answer and on that basis denies that allegation.

14. Answering paragraph 19, defendant admits such allegations and further alleges that during the Council debate on the motion statements were made to Council and opinions were expressed by Council members that there was adequate taxicab service without the operations of Yellow Cab.

15. Answering paragraph 20, defendant lacks sufficient information or belief upon which to answer said para-

graph and on that basis denies generally and specifically each and every allegation contained therein, except that defendant does admit that on March 23, 1981, Mr. Morris appeared before the City Council as alleged.

16. Answering paragraphs 21 and 22, defendant denies generally and specifically each and every allegation contained therein.

FIRST CAUSE OF ACTION

17. Answering paragraph 23, defendant realleges and incorporates its responses previously given herein in response to paragraphs 1 through 22.

18. Answering paragraphs 24, and 26, denies generally and specifically each and every allegation contained therein.

19. Answering paragraph 27, beginning with the word "The" on page 9, line 21, to the word "business", on page 9, line 25, denies generally and specifically each and every allegation contained therein; admits the allegations contained in the balance of said paragraph, except for the last sentence which allegation defendant denies.

20. Answering paragraph 28, defendant denies generally and specifically each and every allegation contained therein.

SECOND CAUSE OF ACTION

21. Answering paragraph 29, the defendant realleges and incorporates its responses previously given in response to paragraphs 1 through 28.

22. Answering paragraph 22 defendant admits the allegations contained therein, except that defendant denies it had any duty to grant plaintiff a franchise.

23. Answering paragraph 31, denies generally and specifically each and every allegation contained therein.

24. Answering paragraph 32, denies generally and specifically each and every allegation therein contained and further denies that plaintiff was or will be damaged in its business in the sum of $10 million, or in any sum, or at all.

25. Answering paragraph 33, first sentence, defendant lacks sufficient information or belief upon which to answer said allegations and on that basis denies generally and specifically each and every allegation contained therein, except that defendant admits that plaintiff is faced with a loss of franchise rights; as to the balance of the paragraph, defendant admits said allegations except that it denies that the action sought is to renew and/or extend such franchise but rather to grant a new franchise replacing the expiring one.

26. Answering paragraph 34, defendant denies generally and specifically each and every allegation contained therein and further denies plaintiff is entitled to punitive or exemplary damages in the amount of $1 million, or in any amount, or at all.

THIRD CAUSE OF ACTION

27. Answering paragraph 35, defendant realleges and incorporates its responses previously given in response to paragraphs 1 through 34.

28. Answering paragraphs 36, 37, 38, and 39, defendant denies generally and specifically each and every allegation contained therein.

FOURTH CAUSE OF ACTION

29. Answering paragraph 40, defendant realleges and incorporates its responses previously given in response to paragraphs 1 through 39.

30. Answering paragraphs 41, 42, and 43, denies generally and specifically each and every allegation contained therein, except that City admits that it denies that any of its actions violate any of plaintiff's constitutional rights as alleged.

AS FURTHER, SEPARATE and INDEPENDENT DEFENSES, the answering defendant alleges:

FIRST AFFIRMATIVE DEFENSE

31. The complaint and each of the causes of action fail to state a cause of action.

SECOND AFFIRMATIVE DEFENSE

32. This court lacks jurisdiction to award any relief against defendant as to these matters alleged.

THIRD AFFIRMATIVE DEFENSE

33. There was a rational basis for the actions and/or omissions of defendant as alleged by plaintiff to be the basis for this cause of action, namely its actions in not granting plaintiff a new franchise to replace its expiring one and all actions and omissions related thereto.

FOURTH AFFIRMATIVE DEFENSE

34. Defendant is immune from any liability for the activities complained of herein insofar as it was acting legislatively.

FIFTH AFFIRMATIVE DEFENSE

35. Defendant alleges that it is immune from liability for punitive damages.

SIXTH AFFIRMATIVE DEFENSE

36. Defendant alleges that it is immune from liability for the activities complained of herein under the Civil Rights Act.

SEVENTH AFFIRMATIVE DEFENSE

37. Defendant alleges that it is immune from liability for any injury caused by the failure to issue a franchise.

EIGHTH AFFIRMATIVE DEFENSE

38. Defendant alleges that its activity complained of was the proper exercise of its police power.

NINTH AFFIRMATIVE DEFENSE

39. Plaintiff waived any right it may have had to the alleged procedural due process.

TENTH AFFIRMATIVE DEFENSE

40. Defendant, its officers, and employees acted at all times, as to the matters of which complained, in good faith and without malice.

DEMAND FOR A JURY TRIAL

Defendant hereby demands jury trial on all matters stated herein.

WHEREFORE, defendant prays that the court give judgment for defendant, and that;

1. Plaintiff take nothing by its claim;

2. Defendant be awarded costs of suit herein; including attorney's fees;

3. For such other and further relief as the court deems proper in the interest of justice.

Dated: April 20, 1981

BURT PINES
City Attorney

THOMAS C. BONAVENTURA
Sr. Asst. City Attorney

JOHN F. HAGGERTY
Assistant City Attorney

By /s/ John F. Haggerty
JOHN F. HAGGERTY
Attorneys for Defendant

CERTIFICATE OF MAILING

I, Edward M. Kritzman, Clerk, United States District Court, Central District of California, and not a party to the within action, hereby certify that on 4/13/81, I served a true copy of this notice of entry on the parties in the within action by depositing true copies thereof, enclosed in sealed envelopes, in the United States Mail in the United States Post Office mail box at Los Angeles, California, addressed as follows:

John B. Rice
5850 Canoga Avenue, Suite 400
Woodland Hills, CA 91367

Michael R. Mitchell
5850 Canoga Avenue, Suite 400
Woodland Hills, CA 91367

EDWARD M. KRITZMAN
Clerk

By /s/ [Illegible]
Deputy Clerk

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 81-5369

DC CV 81-1519

GOLDEN STATE TRANSIT CORPORATION, ETC.,
Plaintiff-Appellee,
vs.

CITY OF LOS ANGELES,
Defendant-Appellant.

[Filed March 7, 1983]

Appeal from the United States District Court
for the Central District of California

JUDGMENT

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the Central District of California and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the preliminary injunction of the said District Court in this Cause be, and hereby is vacated.

A TRUE COPY
ATTEST
PHILLIP B. WINBERRY
Clerk, U.S. Court of Appeals

By: /s/ [Illegible]
Deputy Clerk

Filed and entered September 7, 1982

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Date—3/28/83

Case No. CV 81-1519-CHH

GOLDEN STATE TRANSIT CORP.

—v—

CITY OF LOS ANGELES

PRESENT:

HON. CYNTHIA HOLCOMB HALL, Judge
SHERRILL SCHNEEBERGER, Deputy Clerk
LORAINE DALEY, Court Reporter

Attorneys Present for Plaintiffs:

Michael Goch
Daniel R. Shulman

Attorneys Present for Defendants:

John F. Haggerty

CIVIL MINUTES—GENERAL

PROCEEDINGS:

Plaintiff's ex-parte application for a temporary restraining order.

Court and counsel confer.

After discussing matter, defendant informs court that it will hold off on the cease and desist order until after the court rules on plaintiff's motion for preliminary injunction. Plaintiff withdraws application for temporary restraining order. Defendant's to file opposition by 4/4 or 4/6/83; plaintiff's response due 4/15/83 and the hearing on the preliminary injunction remains set 4/25/83 at 10:00 a.m.

Court orders the mandatory status conference and plaintiff's motion to amend off calendar.

[SEAL]

Initials of Deputy Clerk /s/ SS

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

No CV 81-1519-CHH

GOLDEN STATE TRANSIT CORPORATION,
a California corporation, doing business as
Yellow Cab of Los Angeles,
Plaintiff,

v.

CITY OF LOS ANGELES, a municipal corporation,
Defendant.

ORDER DENYING PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

This matter is before the Court on plaintiff's motion for a preliminary injunction. The Court has considered the points and authorities submitted by the parties, the other relevant materials in the record, and the oral argument of counsel.

IT IS HEREBY ORDERED that plaintiff's motion for a preliminary injunction is DENIED. This Order is based upon the following considerations:

1. Plaintiff has virtually no chance of success on the merits of its constitutional or civil rights claims. *See Golden State Transit v. City of Los Angeles,* 686 F.2d 758 (9th Cir. 1982), *cert. denied,* 103 S. Ct. 729 (1983).

2. Plaintiff has no chance of success on its antitrust claims. The Court will issue Findings of Fact and Conclusions of Law in support of its grant of partial summary judgment to the defendant on this claim.

Dated: April 28, 1983.

/s/ Cynthia Holcomb Hall
CYNTHIA HOLCOMB HALL
United States District Judge

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

No. 81-1519-CHH (GX)

GOLDEN STATE TRANSIT CORPORATION,
a California corporation, doing business as
Yellow Cab of Los Angeles,
Plaintiff,

—vs—

CITY OF LOS ANGELES, a municipal corporation,
Defendant.

PLAINTIFF'S STATEMENT OF GENUINE ISSUES OF MATERIAL FACT

Date: October 17, 1983

Place: Room 10

Time: 10:00 a.m.

Plaintiff, Golden State Transit Corporation, in opposition to defendant City of Los Angeles' motion for partial summary judgment and pursuant to Local Rule 3.14.2, submits its Statement of Genuine Issues of Material Fact as follows:

1. A genuine issue of material fact exists as to whether defendant City of Los Angeles conditioned the renewal of the franchise upon Golden State's doing business with the Teamsters Union.

2. A genuine issue of material fact also exists as to whether the representations and assurances as stated in the Supplemental Declaration of Eugene Maday were in fact made by the city officials.

Dated: October 10, 1983.

Respectfully submitted,

SIMON & SHERIDAN
YASPAN & GOCH
ALIOTO & ALIOTO
GRAY, PLANT, MOOTY,
MOOTY & BENNETT

By: /s/ Patricia A. Knipe
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

EXHIBIT A TO DEFENDANT'S RESPONSE TO PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

* * * *

Filed October 14, 1983

Sec. 21. All legislative power of the city except as herein otherwise provided is vested in the Council and shall be exercised by ordinance, subject to the power of veto or approval by the Mayor as herein set forth. Other action of the Council may be by order or resolution, upon motion. (Added, 1925.)

PETITIONER'S

BRIEF

No. 84-1644

IN THE
Supreme Court of the United States
OCTOBER TERM, 1985

GOLDEN STATE TRANSIT CORPORATION,
Petitioner,

v.

CITY OF LOS ANGELES,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

---

BRIEF FOR THE PETITIONER

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QUESTION PRESENTED

May a municipality, consistent with the policies and principles of federal labor law, insist that a private employer immediately settle a labor dispute and resolve a peaceful strike or forfeit its right to continue doing business?

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

No. 84-1644

GOLDEN STATE TRANSIT CORPORATION,
Petitioner,

v.

CITY OF LOS ANGELES,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

---

BRIEF FOR THE PETITIONER

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit, dated February 26, 1985, is reported at 754 F.2d 830 (9th Cir. 1985), and is set forth in the Appendix to the Petition, at 1a-10a. The opinion of the district court is unreported, and is set forth in the Appendix to the Petition, at 11a-17a. A previous opinion of the Court of Appeals addressing the preemption issue was reported at 686 F.2d 758 (9th Cir. 1982), *cert. denied*, 459 U.S. 1105 (1983), and is set forth in the Appendix to the Petition, at 18a-25a. The district court's initial opinion on the preemption issue is reported at 520 F.

Supp. 191 (C.D. Cal. 1981), and is set forth in the Appendix to the Petition, at 26a-32a.[1]

JURISDICTION

The judgment of the Court of Appeals was entered on February 28, 1985. The Petition for a Writ of Certiorari was filed on April 29, 1985. The jurisdiction of this Court rests on 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Supremacy Clause of the Constitution (Article VI, Section 2) is reprinted in the Appendix to the Petition, at 33a.

Section 8(d) of the National Labor Relations Act, as amended, 29 U.S.C. § 158(d), is reprinted (in pertinent part) in the Appendix to the Petition, at 33a.

STATEMENT OF THE CASE

Background and Facts

This case involves the authority of the City of Los Angeles ("City") to demand that a taxicab company either capitulate to the demands of its employees and immediately resolve a peaceful strike initiated by the Teamsters union, or forfeit its right to continue doing business within the city.

Prior to the events giving rise to this litigation, Golden State Transit Corporation ("Golden State") operated a fleet of approximately 400 taxicabs, under the name "Yellow Cab of Los Angeles," pursuant to a franchise issued by the City. Golden State was the largest of thirteen companies holding taxicab franchises issued by the City.

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[1] An opinion by the Court of Appeals addressing a different question than that presented by this case is reported at 726 F.2d 1430 (9th Cir. 1984), *cert. denied*, —— U.S. ——, 105 S. Ct. 1865 (1985).

Golden State's drivers were organized by Local 572 of the International Brotherhood of Teamsters ("Teamsters"). (Pet. App. 13a-14a, 27a).

The franchises of all thirteen taxicab companies were due to expire on October 29, 1980. (Pet. App. 27a). On March 31, 1980, Golden State applied for a renewal of its franchise. (J.A. 20-21). The other twelve franchise holders also applied for renewals on or about that date. (Pet. App. 27a). The existing franchises were extended several times, in order to allow the City's Department of Transportation, Board of Transportation Commissioners and the Transportation and Traffic Committee of the City Council to consider the renewal requests. (J.A. 22-23, 26-27). Those three bodies each concluded, *inter alia*, that Golden State was in full compliance with the terms and conditions of its franchise, and each recommended that Golden State be granted a franchise renewal until March 31, 1985. (J.A. 24-25, 30, 34, 36-39). An ordinance approving Golden State's long-term franchise renewal, along with ordinances approving long-term franchise renewals for five of the other taxicab companies,[2] was placed on the City Council calendar for February 11, 1981. (J.A. 36-43).

In October, 1980, Golden State's collective bargaining agreement with the Teamsters expired. (Pet. App. 27a). Despite lengthy negotiations, including the assistance of a federal mediator and informal mediation efforts by the Mayor of Los Angeles and members of the City Council, the Teamsters and Golden State remained unable to reach agreement. (J.A. 61). A short-term contract extension, preventing a strike, was scheduled to expire on February 11, 1981. (J.A. 56).

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[2] Golden State was one of six companies found in full compliance with the terms and conditions of its franchise, and thus recommended for long term renewal. (J.A. 38-39). Seven other companies were recommended for one year probationary renewals because of questions about compliance with the terms of their franchises. (J.A. 39-40). A substantial number of cabs were also operated by independent drivers. (J.A. 62).

On February 5, 1981, the Teamsters notified the Mayor of Los Angeles and the President of the City Council of the status of the labor negotiations. (J.A. 55-57). The Teamsters' letters stated that the union would strike on February 11, 1981 if no agreement had been reached. In these letters, the Teamsters further noted that the City Council was schduled to vote on Golden State's franchise renewal at its February 11 meeting.

No settlement was reached between the Teamsters and Golden State, and Golden State's drivers went on strike on February 11, 1981. (Pet. App. 28a, J.A. 51). At the February 11, 1981, City Council meeting, Teamsters representatives reviewed the details of bargaining for the Council, and urged that Golden State's franchise not be renewed. (Pet. App. 28a, J.A. 51). All franchises scheduled for consideration, except Golden State's, were renewed. (J.A. 36-43). Over the company's objection, Golden State's request for renewal was deferred until February 17, 1981. On February 17, again at the urging of Teamsters representatives, the City Council denied Golden State a long-term franchise renewal, allowing only an extension until April 30, 1981. That extension was made contingent on the Council expressly finding, on or before March 27, 1981, that the extension was "in the best interests of the city." No other franchise was subjected to any comparable requirement or condition. (Pet. App. 28a).

The strike continued, but caused no disruption in taxicab service in the community because other operators were able to absorb the overflow. (J.A. 69-70). The Teamsters and Golden State continued to negotiate while the franchise renewal was pending before the City Council, and during these sessions Teamsters representatives sought to use the franchise renewal as leverage against Golden State.[3]

[3] Teamsters representatives thus threatened that "if [Golden State] doesn't settle [its] labor dispute, [it is] going to have a lot of trouble renewing [its] franchise" and specifically threatened Golden State that, "we are going to see that the City revokes or does not renew your franchise if you do not meet our demands." (J.A. 52).

On March 23, 1981, the City Council considered a motion by the Chair of the Council's Transportation and Traffic Committee to extend Golden State's franchise until April 30, 1981. (J.A. 44). At that meeting, Teamsters and AFL-CIO representatives accused Golden State of bargaining in bad faith, claimed that Golden State's refusal to accede to the Teamsters' "extraordinarily modest" demands was the cause of the strike, and again urged that Golden State's franchise not be renewed. (J.A. 60-62, 63-64). In urging rejection, the Teamsters expressed the view that after the City refused to renew Golden State's franchise, the Teamsters would be able to achieve a "decent living with decent benefits . . . with whoever is the franchise that follows . . . ." The union urged a "no" vote on the renewal "so that steps can be taken as early as possible to open up the area to either a new franchise or an existing franchise." (J.A. 62).

Members of the City Council voting against franchise renewal stated that they would be willing to renew the franchise if Golden State signed a new collective bargaining agreement with the Teamsters in the next several days.[4] Several members stated that they voted against re-

[4] Thus, Councilman Cunningham stated "I think it would be wise for us as members of this Council to clearly make a statement by turning down this extension as soon as there is an agreement, we can certainly reopen the matter and be able to extend the franchise . . . . I'm going to vote no on the extension and I can assure you that as soon as this dispute is resolved I will be the first one to bring in the findings . . . ." (J.A. 67, 69). And Council President Ferraro stated "It will be very difficult to get this ordinance past [sic] to extend this franchise if the labor dispute is not settled by the end of the week. And I think that both sides should realize that, that it appears that the Council is not going to extend this franchise today, and both sides should realize that . . . if it is not done by the end of this week, that there is a very good possibility that there will not be a franchise for Yellow Cab. . . ." (J.A. 75).

newal because they disapproved of Golden State's negotiating posture and its refusal to accede to the Teamsters' demands. (J.A. 71-72).

The City Council voted not to extend the franchise. It is "undisputed that the sole basis for refusing to extend plaintiff's franchise was its labor dispute with its Teamster drivers," (520 F. Supp. at 193, Pet. App. at 29a; *id.* at 193-94, Pet. App. 30a), and that the City Council "insisted upon resolution of the dispute as a condition to franchise renewal." (754 F.2d at 833, Pet. App. 8a).

Thereupon, Golden State filed this action in the United States District Court for the Central District of California seeking damages and equitable relief.[5] Golden State alleged that the City's actions against Golden State were preempted by the National Labor Relations Act.[6]

Proceedings Below

The district court granted Golden State's motion for a preliminary injunction. *Golden State Transit Corp. v. City of Los Angeles*, 520 F. Supp. 191, 195 (C.D. Cal. 1981), Pet. App. 32. In granting that motion, the district court held that

> The most fundamental weapon in an employer's arsenal is its right to rely on its economic strength, in the form of weathering a strike, when there is a bargaining impasse. . . . By threatening to allow [Golden State's] franchise to terminate unless it entered into a collective bargaining agreement with the Teamsters, the City Council effectively denied [Golden State] of its most basic weapon, the economic strength of an on-going franchise. Since Congress has sanctioned the self-help measures taken by [Golden State] here in resisting the signing of a new contract with the Union, the City Council is precluded by the Supremacy Clause from taking legislative action which would frustrate the purposes of the N.L.R.A.

520 F. Supp. at 194, Pet. App. 32a (citations omitted). The City appealed.

A Ninth Circuit panel reversed, rejecting the district court's legal analysis.[7] *Golden State Transit Corp. v. City of Los Angeles*, 686 F.2d 758, 759-60 (9th Cir. 1982), *cert. denied*, 459 U.S. 1105 (1983), Pet. App. 20a-21a. The Ninth Circuit recognized that preemption was appropriate in cases involving the "free play of economic forces," *Lodge 76, International Association of Machinists v. Wisconsin Employment Relations Commission*, 427 U.S. 132, 140 (1976), and upheld the lower court's finding that "the City deprived Yellow Cab of an economic weapon—the opportunity to outlast the strikers." 686 F.2d at 759, Pet. App. at 20a. Nevertheless, the court held that under *Allen-Bradley Local No. 1111 v. Wisconsin Employment Relations Board*, 315 U.S. 740 (1943), the use of streets and highways is a matter of "local concern" and that local regulation of labor relations involving streets and highways was, therefore, not preempted. 686 F.2d at 760, Pet. App. 21a.

On remand, the district court concluded that the Court of Appeals' legal analysis was the "law of the case" and granted the City's motion for summary judgment, adopting without revision the proposed order and findings of fact submitted by the City. (Pet. App. 11a-17a). Golden State appealed.

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[5] During the early stages of this lawsuit, the City refrained from issuing a cease and desist order. The City ultimately issued a cease and desist order on April 29, 1983, prohibiting Golden State from operating its taxicabs.

[6] The Complaint also alleged due process and equal protection violations. The due process violations were alleged to arise from the manner in which the City Council made its determination; the equal protection violation was alleged to arise from Golden State's being singled out for non-renewal.

[7] The district court's findings of fact on the preliminary injunction have not been disturbed at any time during this proceeding.

On the second appeal, the Ninth Circuit expressly disavowed its earlier reliance on *Allen-Bradley* to support a broad local interest exception for "streets and highways," concluding that its reliance on that case had been "misplaced." 754 F.2d at 832, Pet. App. 5a. The Court of Appeals acknowledged that the Court's decisions strictly limited the "local interest" exception to cases involving violent, destructive or tortious conduct, and that no case had created a general exception to labor preemption principles for those industries involved in transportation on "streets and highways." *Id.* at 832-33, Pet. App. 6a.[8]

Nevertheless, the Court of Appeals affirmed. The panel again acknowledged that the City altered the balance of economic power in the labor dispute, 754 F.2d at 832, n.1, Pet. App. 4a, and expressly found that the city "insisted upon resolution of the dispute as a condition to franchise renewal". 754 F.2d at 833, Pet. App. 8a. However, the Ninth Circuit extracted language from the Court's discussion of *San Diego Building Trades Council v. Garmon*, 359 U.S. 236 (1959), in *Lodge 76, Machinists*, 427 U.S. at 137, to conclude that there existed a second, distinct "peripheral concern" exception to federal preemption, and that this doctrine was applicable in cases involving the free play of economic forces. The panel held that federal labor policy was not concerned with local transportation, and that the City's determination to condition Golden State's franchise renewal on settlement of the labor dispute was not preempted because it may have been motivated by an interest in local transportation. 754 F.2d at 833, Pet. App. 6a-7a.

[8] The Court of Appeals refused to reach Golden State's further argument that the "local interest" exception applies only in connection with the "primary jurisdiction" branch of the labor preemption doctrine, and cannot be used to justify local regulation that actually conflicts with federal law. *See Metropolitan Life Insurance Co. v. Massachusetts*, —— U.S. ——, 105 S. Ct. 2380, 2394, n.27 (1985); *Allis-Chalmers Corp. v. Lueck*, —— U.S. ——, 105 S. Ct. 1904, 1912-13, n.9 (1985); *Brown v. Hotel & Restaurant Employees*, —— U.S. ——, 104 S. Ct. 3179, 3187 (1984); *see also Belknap, Inc. v. Hale*, 463 U.S. 491, 498-99 (1983). *See* 754 F.2d at 832, n.2, Pet. App. 5a.

Under the Court of Appeals' analysis, preemption is appropriate only where a city is in terms "seeking to directly alter the substantive outcome of a labor dispute" or attempting "to dictate terms of the collective bargaining agreement." 754 F.2d at 833, Pet. App. 8a.[9] The City's demand that Golden State immediately resolve the labor dispute or face legislated extinction was impliedly found *not* to be an attempt "to directly alter the substantive outcome" of the labor dispute or "dictate terms of the collective bargaining agreement," and thus not preempted by the N.L.R.A. *Id.*[10]

[9] The Court of Appeals' reliance on the City's assumed motive in its 'seeking to directly alter the substantive outcome" test is inconsistent with its prior ruling in the case that the courts are barred from examining legislative motive in preemption analysis. *See Golden State Transit Corp. v. City of Los Angeles*, 686 F.2d at 759, Pet. App. 20a. It was on this basis that the Ninth Circuit was able to ignore the district court's finding that "[t]he city has attempted substantively to influence the economic (as opposed to political) weapons of [Golden State] and its Teamster drivers in their labor negotiation efforts, by diminishing the economic power of [Golden State], and increasing the economic power of the drivers. This was the City's true purpose in declining to renew plaintiff's franchise". (J.A. 119). In any event, the court below expressly found that the City had in fact conditioned renewal of the franchise upon resolution of the labor dispute, 754 F.2d at 833, Pet. App. 8a, and that the effect of the City's action was to strengthen the Teamsters' hand, deny Golden State the opportunity to outlast the strike, and thereby alter the balance of bargaining power between the parties. *Id.* at 832, n.1, Pet. App. 4a.

[10] Judge Norris concurred only in result, expressly refusing to comment on the "serious deficiencies" in the majority's preemption analysis. 754 F.2d at 834, n.1 (Norris, J., concurring), Pet. App. 10a.

SUMMARY OF ARGUMENT

The decision below authorizes local governments to intervene in labor disputes, to compel agreement and pretermit the use of economic weapons by the contending parties, so long as the municipality does not "dictate terms of the collective bargaining agreement." This ruling is incompatible with the basic principle, established by Congress and reiterated in numerous decisions of this Court, that industrial disputes are to be resolved by private parties free from government interference or obstruction. The City's intrusion into the bargaining process was plainly inconsistent with the regime of free and voluntary collective bargaining that Congress created under federal labor law.

By conditioning renewal of Golden State's franchise upon immediate resolution of the labor dispute with the Teamsters, the City forced Golden State to choose between agreeing with the Teamsters' demands or being legislated out of existence. Under federal labor law, however, neither party to a labor dispute may be forced by government action to accede to proposals made by the other side. The City effectively denied Golden State the right to disagree with the Teamsters, and thus contravened the principle of freedom of contract that lies at the heart of the collective bargaining process.

The City also prevented Golden State from exercising the most fundamental economic weapon guaranteed to it by federal law, by precluding its attempt to weather the Teamsters' strike. Federal labor law guarantees that both labor and management may resort to economic weapons in the event of disagreement at the bargaining table. By conditioning renewal of Golden State's franchise, and thus its continued existence, upon immediate resolution of the labor dispute, the City deprived Golden State of the opportunity to rely on its economic strength

in face of the Teamster's strike and denied it an economic weapon that Congress placed at its disposal.

The Ninth Circuit's approval of the City's conduct rested upon a fundamental misapprehension of the meaning of the "free play of economic forces" branch of the preemption doctrine. That doctrine preserves the congressional judgment that collective bargaining and resort to economic weapons must be insulated from all governmental coercion, obstruction or interference. This Court's decisions clearly establish that under the Supremacy Clause, state or local attempts to compel agreement or punish conduct that Congress has preserved from government sanction cannot be justified, no matter what collateral local interests those coercive efforts may serve.

ARGUMENT

I. THE CITY'S CONDUCT IS PREEMPTED BECAUSE IT CONFLICTS WITH TWO CORE GUARANTEES OF FEDERAL LABOR LAW, FREE COLLECTIVE BARGAINING AND RESORT TO ECONOMIC WEAPONS.

The decision below calls into question the underlying premises and vitality of what is sometimes called the second branch of the labor preemption doctrine, the "free play of economic forces" branch, which prohibits state and local interference with private conduct that Congress intended to preserve from all governmental regulation.[11]

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[11] The "first branch" of labor preemption doctrine, the "primary jurisdiction" branch, represented by *San Diego Building Trades Council v. Garmon*, 359 U.S. 236 (1959), is designed to protect the authority of the National Labor Relations Board and ensure uniform federal regulation of labor-management relations. Defining the scope of the Board's authority in cases where conduct is "arguably" subject to federal law involves "delimiting areas of *potential* conflict," *id.*, at 242 (emphasis added), and necessarily raises questions of comity and, therefore, a balancing of federal and local

This branch of the preemption doctrine is in turn based upon the fundamental Supremacy Clause principle that state or local law or regulation that conflicts with federal law, or that stands "as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress," *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941),[12] is preempted. This Court's decisions have established that the "full purposes and objectives of Congress" in enacting the National Labor Relations Act included exempting certain conduct from all forms of government regulation, obstruction or interference.

This Court's labor law rulings consistently reflect the understanding that Congress intended industrial disputes to be settled by private parties, free from government coercion, through the give and take of collective bargaining and the use of the economic weapons that Congress deliberately left at their disposal.

> The ordering and adjusting of competing interests through a process of free and voluntary collective

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regulatory interests. Cases involving the "free play of economic forces," on the other hand, are concerned with activity that Congress deliberately intended to preserve from all regulation, federal or local, and in which any state or local regulation creates an actual conflict with federal law. *See Brown v. Hotel and Restaurant Employees*, —— U.S. ——, 104 S. Ct. 3179, 3186 (1984); *accord, Metropolitan Life Insurance Co. v. Massachusetts*, —— U.S. ——, 105 S. Ct. 2380, 2394, n.27 (1985); *Allis-Chalmers Corp. v. Lueck*, —— U.S. ——, 105 S. Ct. 1904, 1912-13, n.9 (1985). *See* discussion *infra*, at 28-30.

[12] The Court's further explication of its statement in *Hines* is illuminating:

> If the purpose of the act cannot otherwise be accomplished—if its operation within its chosen field else must be frustrated and its provisions be refused their natural effect—the state law must yield to the regulation of Congress within the sphere of its delegated power.

312 U.S. at 67, n.20. As will be shown *infra*, this is exactly the situation confronting the Court.

> bargaining is the keystone of the federal scheme to promote industrial peace. State law which frustrates the effort of Congress to stimulate the smooth functioning of that process thus strikes at the very core of federal labor policy.

Local 174, Teamsters v. Lucas Flour Co., 369 U.S. 95, 104 (1962). "Free collective bargaining is the cornerstone of the structure of labor-management relations carefully designed by Congress when it enacted the NLRA." *New York Telephone Company v. New York State Department of Labor*, 440 U.S. 519, 551 (1979) (Powell, J., dissenting); *see also Metropolitan Life Insurance Co. v. Massachusetts*, —— U.S. ——, 105 S.Ct. 2380, 2396-97 (1985); *Belknap, Inc. v. Hale*, 463 U.S. 491, 524 (1983) (Brennan, J., dissenting); *H.K. Porter Co. v. NLRB*, 397 U.S. 99, 102-04 (1970); *NLRB v. Insurance Agents International Union*, 361 U.S. 477, 484-85 (1960); *Bus Employees v. Missouri*, 374 U.S. 74, 82 (1963).

In sum, Congress created a system of private industrial governance whereby management and labor could "establish, through collective negotiations, their own charter for the ordering of industrial relations . . . ." *Local 24, Teamsters v. Oliver*, 358 U.S. 283, 295 (1959). In order for this process of industrial self-regulation to function, management and labor must by definition be free to meet and confer, agree or disagree, settle their differences peacefully or by resort to economic sanctions, and determine their own destiny without federal, state or local government interference.

The "free play of economic forces" decisions of this Court vindicate the congressional judgment that no government, federal, state or local, may intervene in the collective bargaining process or prevent the parties' resort to economic weapons. Thus, in *Local 20, Teamsters v. Morton*, 377 U.S. 252 (1964), the Court struck down an Ohio law that barred a type of secondary boycott not prohibited by federal law. The Court emphasized that

"[i]n selecting which forms of economic pressure should be prohibited . . . *Congress* struck the 'balance . . . between the uncontrolled power of management and labor to further their respective interests,'" 377 U.S. at 258-59 (emphasis added), *quoting Local 1976, United Brotherhood of Carpenters v. NLRB*, 357 U.S. 93, 100 (1958). The Court held that the state could not deny labor the right to use the economic weapon there at issue, because it was not free to tamper with the framework of self-help and economic self-interest that Congress thought appropriate. In commenting on a state's right to upset the balance struck by Congress, the Court observed:

> This weapon of self-help, permitted by federal law, formed an integral part of the petitioner's effort to achieve its bargaining goals during negotiations with the respondent. Allowing its use is a part of the balance struck by Congress between the conflicting interests of the union, the employees, the employer and the community . . . . If the Ohio law . . . can be applied to proscribe the same type of conduct which Congress focused upon but did not proscribe . . . the inevitable result would be to frustrate the congressional determination to leave this weapon of self-help available, and to upset the balance of power between labor and management expressed in our national labor policy. *"For a state to impinge on the area of labor combat designed to be free is quite as much an obstruction of federal policy as if the state were to declare picketing free for purposes or by methods which the federal Act prohibits." Garner v. Teamsters Union*, 346 U.S. 485, 500 [(1953)].

377 U.S. at 259-60 (emphasis added, citations omitted).

This doctrine was further elaborated in *Lodge 76, Machinists v. Wisconsin Employment Relations Commission*, 427 U.S. 132 (1976). There, the Court fully explored the basis for this branch of the preemption doctrine, and held that state efforts to ban a concerted refusal to work overtime were improper, again on the understanding that state regulation of this economic

weapon would upset the congressionally-established "balance of protection, prohibition and laissez-faire." Cox, *Labor Law Preemption Revisited*, 85 Harv. L. Rev. 1337, 1352 (1972).[13]

Just last term, the Court succinctly described the foundations of the free play of economic forces branch of the preemption doctrine:

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[13] The commentary of Professor Cox expresses the foundation of the "free play of economic forces" branch of the preemption doctrine:

> Two fundamental ideas lie at the core of the national labor policy: (1) freedom of employee self-organization; and (2) the voluntary private adjustment of conflicts of interest over wages, hours, and other conditions of employment through the negotiation and administration of collective bargaining agreements. Both may involve resort to strikes, boycotts, lockouts, and other economic pressures. Providing a legal framework for self-organization and collective bargaining involves determining not only how far the conduct of employers and unions should be regulated but also how far they should be free.
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> * * * *
>
> The legal framework also deals with the mutual obligations of employer and bargaining representative in negotiating terms of employment. Since freedom to reject the terms proposed by the other party implies freedom to resort to economic pressures, the framework again necessarily includes a law of lockouts, strikes, and picketing. To restrict either the objectives for which economic pressure can be applied or the forms of pressure which are permissible tips the scale towards management or union. On every point, therefore, formulating the national labor policy required balancing the various interests of management, union, employees, and the public in deciding which tactics should be prohibited and which should be allowed.

Cox, *Labor Law Preemption Revisited*, 85 Harv. L. Rev. 1337, 1352-53 (1972); *and see* Cox, *Recent Developments in Federal Labor Law Preemption*, 41 Ohio St. L.J. 277, 278, 295 (1980); Cox, *Federalism in the Law of Labor Relations*, 67 Harv. L. Rev. 1297, 1318-19 (1954); Lesnick, *Preemption Reconsidered: The Apparent Reaffirmation of Garmon*, 72 Colum. L. Rev. 469, 478-80 (1972); Michelman, *State Power to Govern Concerted Employee Activities*, 74 Harv. L. Rev. 641, 662 (1961).

These cases rely on the understanding that in providing in the NLRA a framework for self-organization and collective bargaining, Congress determined both how much the conduct of unions and employers should be regulated, and how much it should be left unregulated:

> "The States have no more authority than the Board to upset the balance that Congress has struck between labor and management in the collective-bargaining relationship. 'For a state to impinge on the area of labor combat designed to be free is quite as much an obstruction of federal policy as if the state were to declare picketing free for purposes or by methods which the federal Act prohibits.'" *New York Tel. Co. v. New York Labor Department*, 440 U.S., at 554 (dissenting opinion), quoting *Garner v. Teamsters*, 346 U.S. 485, 500 (1953).

Metropolitan Life Insurance Co. v. Massachusetts, 105 S. Ct. at 2395.

The Court has thus repeatedly held that Congress intended industrial disputes to be settled by the contending parties through collective bargaining, accompanied by resort to economic weapons, free from government coercion. In the area that Congress elected to leave unregulated, and thereby subject to the "free play of economic forces," no regulation, whether by the National Labor Relations Board or by state or local authorities, is permitted. In this sense, it can be said that both management and labor have been granted a right to bargain, and a right to resort to economic weapons, free from government coercion.

As shown below, Congress intended that both management and labor would enjoy the absolute discretion to reject proposals made by the other side, and to maintain their disagreement, free from state or local pressure to accede to the other side's demands. Similarly, Congress contemplated that both management and labor

would be free to use economic weapons in a labor dispute, and that an employer would be entitled to weather a strike and outlast his striking employees without fear of government sanctions for doing so. By conditioning Golden State's franchise renewal upon immediate settlement of its labor dispute with the Teamsters, the City deprived Golden State of these basic freedoms guaranteed by federal law.

A. By Conditioning Golden State's Franchise On Its Reaching Agreement With The Teamsters, The City Precluded Free Collective Bargaining.

The City's intervention in this labor dispute was a direct assault upon free collective baragining, and thus upon the very heart of federal labor law. In an unbroken line of cases beginning nearly fifty years ago in *NLRB v. Jones & Laughlin Steel Co.*, 301 U.S. 1, 45-47 (1937), the Court has repeatedly held that free and voluntary collective bargaining is premised on freedom of contract [14] and necessarily subsumes the absolute right to disagree with proposals made by the other side. The very notion of free and voluntary bargaining is antithetical to the idea of government compulsion. In *Jones & Laughlin Steel Co.*, the Court sustained the validity of the Wagner Act and specified that the Act does not compel agreement between the parties:

> The Act does not compel agreements between employers and employees. It does not compel any agreement whatever. . . . The theory of the Act is that free opportunity for negotiation with accredited representatives of employees is likely to promote industrial peace and may bring about the adjustments and

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[14] *See, e.g., H.K. Porter Co. v. NLRB*, 397 U.S. 99, 108 (1970); *and see* Weiler, *Striking a New Balance: Freedom of Contract and the Prospects for Union Representation*, 98 Harv. L. Rev. 351, 352 (1985) ("The keystone of labor law during the collective bargaining phase is freedom of contract.").

> agreements which the Act in itself does not attempt to compel.

301 U.S. at 45.

This construction of the law is plainly faithful to the legislative history of the Wagner Act, which is filled with explicit statements by the Act's proponents denying that any party could be compelled to reach agreement under the new law. The Senate report on the bill that became the Wagner Act expressly addressed this issue:

> The committee wishes to dispel any possible false impression that the bill is designed to compel the making of agreements or to permit governmental supervision of their terms. It must be stressed that the duty to bargain collectively does not carry with it the duty to reach an agreement, *because the essence of collective bargaining is that either party shall be free to decide whether proposals made to it are satisfactory.*

S. Rep. No. 573, 74th Cong., 1st Sess. 12 (1935) (emphasis added). And the Act's author, Senator Wagner, expressed an identical understanding:

> Most emphatically this provision does not imply governmental supervision of wage or hour agreements. It does not compel anyone to make a compact of any kind if no terms are arrived at that are satisfactory to him. *The very essence of collective bargaining is that either party shall be free to withdraw if its conditions are not met.*

79 Cong. Rec. 7571 (1935) (emphasis added).[15]

[15] These statements are merely illustrative of the numerous explicit assurances made by the Act's supporters that neither employer nor union could be forced to agree to any contract. Perhaps the most famous such assurance was made by Senator Walsh:

> The bill indicates the method and manner in which employees may organize . . . and leads them to the office door of their employer with the legal authority to negotiate for their fellow employees. The bill does not go beyond the office door. It leaves the discussion between the employer and the employee, and the agreements which they may or may not make, voluntary and with that sacredness and solemnity to a voluntary agreement with which both parties to an agreement should be enshrouded.

79 Cong. Rec. 7659 (1935). This legislative history was discussed at length in *H.K. Porter Co. v. NLRB*, 397 U.S. 99, 104-05 (1970). *See also Comment: The Radical Potential of the Wagner Act: The Duty to Bargain Collectively*, 129 U. Pa. L. Rev. 1392, 1401-09 (1981); *and see* Cox, *The Duty to Bargain in Good Faith*, 71 Harv. L. Rev. 1401, 1406-09 (1958).

The implicit understanding that the "very essence of collective bargaining" is the right to disagree was made explicit in the Taft-Hartley Act. In 1947, Congress attempted to define the duty to bargain, and added Section 8(d) to the law:

> For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, *but such obligation does not compel either party to agree to a proposal or require the making of a concession* . . . .

29 U.S.C. § 158(d) (emphasis added). This guarantee, added to the law primarily to restrain attempts by the National Labor Relations Board to sit in judgment upon the substantive terms of bargaining, strongly reinforced the understanding that freedom of contract lies at the heart of the collective bargaining system, and that government coercion is its antithesis.

Acting on this understanding, the Court has uniformly rejected every attempt to impose agreement upon contending parties, whether the attempt was premised upon

the remedial power of the National Labor Relations Board, *H.K. Porter Co. v. NLRB*, 397 U.S. 99 (1970), or upon the NLRB's presumed power to define the duty to bargain collectively. *NLRB v. American National Insurance Co.*, 343 U.S. 395 (1952). Moreover, it is clear that the prohibition applies with equal force to state and local governments. In *Lodge 76, Machinists*, 427 U.S. at 153, the Court held:

> Our decisions since *Briggs-Stratton* have made it abundantly clear that state attempts to influence the substantive terms of collective-bargaining agreements are as inconsistent with the federal regulatory scheme as are such attempts by the NLRB: "Since the federal law operates here, in an area where its authority is paramount, to leave the parties free, the inconsistent application of state law is necessarily outside the power of the State." *Teamsters Union v. Oliver*, 358 U.S. 283, 296 (1959).

In *NLRB v. Insurance Agents' International Union*, 361 U.S. 477, 488 (1960) (emphasis added), the Court stated:

> Congress intended that the parties should have wide latitude in their negotiations, unrestricted by *any* government power to regulate the substantive solution of their differences.

If the principle of voluntary agreement is to have any meaning whatver, it must rest upon freedom from all government compulsion, federal, state and local.

The City here applied coercive pressure by forcing Golden State to accede to the Teamsters' demands in order to save its business. The decision below is the only reported case approving such efforts to coerce settlement of a labor dispute; the lower courts have been scrupulous to bar even indirect interference by state or local governments in labor disputes. *See, e.g., Oil Chemical & Atomic Workers, Local 5-283 v. Arkansas Louisiana Gas Co.*, 332 F.2d 64 (10th Cir. 1964) (injunctive relief appropriate to prevent issuance of public report

on causes of labor dispute, on grounds that this would mold public opinion, coerce a settlement and thus disturb free collective bargaining); *General Electric Co. v. Callahan*, 294 F.2d 60, 67 (1st Cir. 1961) (same); *Grand Rapids City Coach Lines, Inc. v. Howlett*, 137 F. Supp. 667, 673-74 (W.D. Mich. 1955) (same); *and see Cab Operating Corp. v. City of New York*, 243 F. Supp. 550 (S.D.N.Y. 1965) (mayor's attempt to mediate taxicab strike preempted).

The instant case is similar to *Delaware Coach Co. v. Public Service Commission*, 265 F. Supp. 648 (D. Del. 1967), and the reasoning of that case, applying this Court's precedents, is applicable here. In *Delaware Coach*, the Delaware Public Service Commission threatened to revoke the operating license of a bus company that was engaged in a lengthy strike. The district court enjoined the threatened revocation, as did the district court in this case, 520 F. Supp. 191, on the following basis:

> [T]he essence of collective bargaining is the absence of outside coercive pressures. . . . [I]t is obvious that the petitioners before the Commission are seeking to force Coach and the Union to an agreement, by threatening the revocation of Coach's certificate. The mere possibility that the Commission might exercise its revocation power is like the proverbial sword of Damocles, poised and ready to terminate Coach's economic existence. Any contract negotiated under such circumstances might not be solely the product of collective bargaining, and might frustrate the federal statutory scheme.

265 F. Supp. at 651.

Free and voluntary collective bargaining cannot coexist with the pressures imposed by the City in this case. An employer's right to disagree is meaningless if a municipality can condition the continued existence of its business upon immediate resolution of a disagreement with a labor union. It is no answer to assert that the City

did not attempt to champion one particular provision—for example, higher wages—because a blanket demand for settlement, enforced by the ultimate sanction involved here, necessarily coerces employer concession on every issue in dispute. The free and voluntary collective bargaining envisioned by Congress requires that the parties reach their own accords free from external pressures imposed by the state, and certainly without threats to the employer's continued existence.[16] To require one party to settle or suffer legislated extinction is to deprive that party of its right to reject the other side's demands, and thereby to eviscerate the principle of free collective bargaining that lies at the very heart of the Act.

B. By Conditioning Golden State's Franchise On Settlement Of The Strike, The City Abridged Golden State's Resort To Its Most Fundamental Economic Weapon.

Federal law clearly protects resort to economic weapons in a labor dispute. Indeed, the concept of free collective bargaining necessarily implies that the parties may rely upon their economic strength in the event of a deadlock:

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[16] Indeed, even the City's arbitrary time limits in this case were inconsistent with federal law. The City initially granted Golden State a franchise extension until April 30, 1981, provided the City Council found, on or before March 27, 1981, that such an extension "was in the best interests" of the City. (Pet. App. 28a). This franchise extension, granted on February 17, 1981, essentially gave Golden State one month within which to settle the labor dispute. Moreover, on March 23, 1981, City council members voting against renewal made it clear that they would grant Golden State's renewal request if a settlement was achieved by March 27. *Supra*, note 4. This conduct plainly impinged upon Golden State's federal right to disagree, which allowed Golden State to refuse agreement unless and until the proposals made by the Teamsters became acceptable to it. *See New York Telephone Co. v. New York State Department of Labor*, 440 U.S. 519, 533, n.22 (1979) (implying that state has no power to fine employers who do not reach agreement within specified time).

> It must be realized that collective bargaining, under a system where the Government does not attempt to control the results of negotiations, cannot be equated with an academic collective search for truth—or even with what might be thought to be the ideal of one. The parties—even granting the modification of views that may come from a realization of economic interdependence—still proceed from contrary and to an extent antagonistic viewpoints and concepts of self-interest. The system has not reached the ideal of the philosophic notion that perfect understanding among people would lead to perfect agreement among them on values. The presence of economic weapons in reserve, and their actual exercise on occasion by the parties, is part and parcel of the system that the Wagner and Taft-Hartley Acts have recognized.

NLRB v. Insurance Agents' International Union, 361 U.S. 477, 488-89 (1960); *and see American Ship Building Co. v. NLRB*, 380 U.S. 300, 317 (1965) ("the Act also contemplated resort to economic weapons should more peaceful measures not avail"); *Bus Employees v. Missouri*, 374 U.S. 74, 82 (1963) ("Collective bargaining, with the right to strike at its core, is the essence of the federal scheme.").

Much of the Court's preemption jurisprudence arises from local attempts to restrict the exercise of labor's economic weapons, and the Court has repeatedly preserved the tactical prerogatives of labor unions from state or local interference. As noted above, *Garner v. Teamsters, Lodge 76, Machinists* and *Teamsters v. Morton* all involved state attempts to ban concerted activities by labor that Congress had implicitly sanctioned. In *Bus Employees v. Missouri*, 374 U.S. 74 (1963), the Court barred a state government's attempt to seize the facilities of a struck local transit company, allegedly justified on "emergency" grounds, because the state's plan conflicted with the right to strike. *See also Bus Employees v. Wisconsin Employment Relations Board*, 340 U.S. 383, 391-96 (1951) (overturning similar Wisconsin public utility law); *United Automobile Workers v. O'Brien*, 339 U.S.

454 (1950) (invalidating state law requiring strike vote prior to work stoppage). But the absence of cases in which the Court has acted to preserve management prerogatives from state or local interference does not in any way support the proposition that management does not possess protected weaponry under the National Labor Relations Act.

Economic warfare may be waged by both management and labor, and it has long been understood that both parties may rely upon their economic strength in the event of disagreement. *Lodge 76, Machinists*, 427 U.S. at 147 (1976); *id.*, at 155 (Powell, J. concurring); *Belknap, Inc. v. Hale*, 463 U.S. 491, 525 (1983) (Brennan, J., dissenting). The Court has approved numerous employer economic weapons, including the hiring of permanent replacements for strikers, *NLRB v. Mackay Radio Co.*, 304 U.S. 333 (1938), the lockout, *American Ship Building Co. v. NLRB*, 380 U.S. 300 (1965); *NLRB v. Truck Drivers Local Union No. 449*, 353 U.S. 87 (1957), and the hiring of temporary replacements during a lockout. *NLRB v. Brown*, 380 U.S. 278 (1965). For both management and labor, then, "[t]he presence of economic weapons in reserve, and their actual exercise on occasion by the parties, is part and parcel of the system that the Wagner and Taft-Hartley Act have recognized." *NLRB v. Insurance Agents' International Union*, 361 U.S. at 489.

In this case, Golden State merely sought to resist the economic pressure generated by the Teamsters strike. Golden State exercised what the district judge aptly called "the most fundamental weapon in an employer's arsenal"; "its right to rely on its economic strength, in the form of weathering a strike, when there is a bargaining impasse." 520 F. Supp. at 194, Pet. App. 32a. Golden State determined to outlast the strikers, hoping that the deprivation of income occasioned by the strike would eventually produce terms acceptable to management.

The Ninth Circuit expressly found that the City denied Golden State this fundamental economic weapon. 686

F.2d at 759, Pet. App. 20a. The right to strike necessarily contemplates the employer's reciprocal right to attempt to survive a strike. Whether characterized as a "legitimate economic weapon," as an independent federal "right," or merely as lawful resistance to the union's economic initiative, federal law allows an employer to attempt to weather a strike without federal, state or local government interference. The City plainly deprived Golden State of its ability to rely upon its own economic strength in response to the Teamsters' strike.

Conceptually, this case stands on the same footing as a state or local attempt to terminate a strike by threatening the right of strikers to earn a livelihood—for example, by revoking or refusing to renew individual taxicab permits or driver's licenses—unless the labor dispute were immediately resolved. Here, the City of Los Angeles denied management its most basic economic weapon by conditioning the continued existence of its business upon immediate resolution of the labor dispute, thus decreeing an end to Golden State's efforts to resist the strike. This crude demand placed all the coercive power of the state behind one of the two parties to the dispute. If the right to resort to economic weapons is to have any meaning at all, that type of local government action cannot stand.

II. THE DECISION BELOW RESTS UPON A FUNDAMENTAL MISUNDERSTANDING OF THIS COURT'S PREEMPTION DECISIONS, AND THREATENS MASSIVE AND UNWARRANTED LOCAL ENTANGLEMENT IN COLLECTIVE BARGAINING.

A. The Decision Below Improperly Confuses Primary Jurisdiction And Free Play Of Economic Forces Preemption.

The basic error of the Ninth Circuit, in both of its opinions, was its *ad hoc* balancing of federal and local interests in a case where the local conduct actually con-

flicts with federal law. The Court below engaged in this balancing initially under the "local interest" rubric, 686 F.2d at 760, Pet. App. 21a, and subsequently under the "peripheral concern" label, 754 F.2d at 833, Pet. App. 6a-7a. Nevertheless, in both opinions the Ninth Circuit justified the City's conduct by declaring it, *ipse dixit*, beyond the scope of federal interest and within the realm of local responsibility. In so ruling, the Ninth Circuit plainly confused primary jurisdiction preemption with preemption based upon the exercise of federally guaranteed rights.

In *Brown v. Hotel and Restaurant Employees*, —— U.S. ——, 104 S. Ct. 3179 (1984), the Court rejected precisely the analysis employed by the Ninth Circuit panel in this case. In *Brown*, the State of New Jersey argued that its law regulating the qualifications of union officials was ultimately justified by the state's local interest in crime control. The Court rejected that argument because it confused "primary jurisdiction" preemption with preemption based upon an express congressional judgment as to how the conduct in question was to be treated:

> This argument, however, confuses preemption which is based on actual federal protection of the conduct at issue from that which is based on the primary jurisdiction of the National Labor Relations Board (NLRB) . . . . In the latter situation, a presumption of federal pre-emption applies even when the state law regulates conduct only arguably protected by federal law. Such a pre-emption rule avoids the potential for jurisdictional conflict between state courts or agencies and the NLRB by ensuring that primary responsibility for interpreting and applying this body of labor law remains with the NLRB. See *Motor Coach Employees v. Lockridge*, 403 U.S. 274, 286-289, 91 S. Ct. 1909, 1917-1919, 29 L.Ed.2d 473 (1971); *San Diego Union v. Garmon, supra*, 459 (sic) U.S., at 244-245, 79 S. Ct., at 779-780. This presumption

> of federal pre-emption, based on the primary jurisdiction rationale, properly admits to exception when unusually "deeply rooted" local interests are at stake. In such cases, appropriate consideration for the vitality of our federal system and for a rational allocation of functions belies any easy inference that Congress intended to deprive the States of their ability to retain jurisdiction over such matters . . . .
>
> If the state law regulates conduct that is actually protected by federal law, however, pre-emption follows not as a matter of protecting primary jurisdiction, but as a matter of substantive right. Where, as here, the issue is one of an asserted substantive conflict with a federal enactment, then "[t]he relative importance to the State of its own law is not material . . . for the Framers of our Constitution provided that the federal law must prevail." *Free v. Bland*, 369 U.S. 663, 666, 82 S. Ct. 1089, 1092, 8 L. Ed.2d 180 (1962).

104 S. Ct. at 3186-87. And last term in *Allis-Chalmers Corp. v. Lueck*, —— U.S. ——, 105 S. Ct. 1904, 1912-13, n.9 (1985), the Court made the same point in a case where the Wisconsin Supreme Court had relied upon the "peripheral concern" exception to federal preemption:

> In addressing only the question of the necessity of protecting the Board's jurisdiction, the court "confuse[d] preemption which is based on actual federal protection of the conduct at issue from that which is based on the primary jurisdiction of the National Labor Relations Board." *Brown v. Hotel & Restaurant Employees & Bartenders*, —— U.S. at ——, 104 S.Ct. at 3186. So-called *Garmon* pre-emption involves protecting the primary jurisdiction of the NLRB, and requires a balancing of state and federal interests. The present tort suit would allow the State to provide a rule of decision where Congress has mandated that federal law should govern. In this situation the balancing of state and federal interests required by *Garmon* pre-emption is irrelevant, since Congress, acting within its power under the Com-

merce Clause, has provided that federal law must prevail. *Id.*, at ——, 104 S.Ct. at ——.

And see Metropolitan Life Insurance Co. v. Massachusetts, —— U.S. ——, 105 S. Ct. 2380, 2394, n.27 (1985).

This principle—that local interests may not be relied upon to set aside the determinations of Congress acting within its proper sphere of authority—rests upon the most basic meaning of the Supremacy Clause itself. Once Congress has determined that private parties are free to act in a certain fashion, contrary local judgments about whether their conduct serves the public interest can have no force and effect. Allowing such local judgments to prevail would frustrate congressional intent and "stand as an obstacle to the accomplishment and execution of the full purposes and objective of Congress." [17]

For this reason, the "local interest" and "peripheral concern" exceptions are limited to "primary jurisdiction" preemption cases, where the issue is not one of actual conflict between local regulation and a congressional judgment that certain conduct is beyond the scope of all regulation. In primary jurisdiction cases, the issue is whether

[17] The strength of the local interest may be relevant in "free play of economic forces" cases in determining whether Congress did in fact decide that certain conduct should be left unregulated. *See Metropolitan Life Insurance Co. v. Massachusetts*, —— U.S. ——, 105 S. Ct. at 2394, n.27 (1985), citing *New York Telephone Co. v. New York Department of Labor*, 440 U.S. 519, 539-40 (1979). Thus, in *Brown v. Hotel & Restaurant Employees*, the Court found that Congress, in enacting the Labor-Management Reporting and Disclosure Act, had recognized the state interest in crime control and had determined that state limitations on the qualifications of union officials did not frustrate congressional intent under the federal labor laws. Such judgments, though, are solely based on assessment of the intent of Congress and the commands of federal law. There is and can be no evidence that Congress intended to tolerate local regulation that clearly threatens the core concerns of the federal act, free collective bargaining and resort to economic weapons. *See infra*, at 32-33.

conduct admittedly subject to some form of regulation should be regulated in the first instance by the state or locality, or whether the federal interest in a uniform labor law administered and interpreted by the National Labor Relations Board requires displacement of state or local regulation. *See generally Motor Coach Employees v. Lockridge*, 403 U.S. 274, 291 (1971) (*Garmon* rule protects against sacrifice of "important federal interests in a uniform law of labor relations centrally administered by an expert agency . . ."). Primary jurisdiction cases thus deal not only with conduct that Congress protected or prohibited,[18] but also with conduct that is only arguably subject to federal law. It is with regard to such arguably protected or prohibited conduct that the *Garmon* doctrine seeks to delimit areas of potential conflict, 359 U.S. at 242, by striking a balance between traditional state or local interests and the need for the NLRB to determine in the first instance whether the conduct in question is subject to federal labor law. It is this relatively amorphous federal interest in preventing potential conflicts and protecting the primacy of the NLRB that properly admits of exceptions based upon an assessment of relative federal and local concerns.[19] Nothing in the vari-

[18] In cases involving conduct that is *actually* protected or prohibited, federal law is controlling and state law is preempted. Indeed, in *Garmon* itself, the Court held:

> When it is clear or may fairly be assumed that the activities which a State purports to regulate are protected by § 7 of the National Labor Relations Act, or constitute an unfair labor practice under § 8, due regard for the federal enactment requires that state jurisdiction must yield. To leave the States free to regulate conduct so plainly within the central aim of federal regulation involves too great a danger of conflict between power asserted by Congress and requirements imposed by state law.

359 U.S. at 244. *See Sears, Roebuck & Co. v. Carpenters*, 436 U.S. 180, 187 (1978).

[19] As stated in *Brown*, "In such cases appropriate consideration for the vitality of our federal system and for a rational allocation

ous primary jurisdiction cases suggests that an affirmative congressional judgment to protect, prohibit, or leave certain conduct completely outside the universe of conduct subject to regulation may be revisited by states or municipalities, or that an actual federal-state conflict may be resolved in favor of state law.

The Ninth Circuit's assertion that the "peripheral concern" exception applies outside the "primary jurisdiction" context was, therefore, mistaken. At no time has the Court so held; indeed, the Court's decisions either expressly hold otherwise, *Brown v. Hotel & Restaurant Employees*,[20] or imply that the "local interest" and "peri-

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of functions belies any easy inference that Congress intended to deprive the States of their ability to retain jurisdiction over such matters." 104 S. Ct. at 3187.

Thus, primary jurisdiction cases may be said to lie on a continuum, with certain cases so close to the core of the NLRB's jurisdiction that congressional tolerance for state regulation cannot be presumed, and other cases (1) so close to the core of traditional state power and common law concerns ("local interest"), or (2) so distant from Congress' primary concerns ("peripheral concerns"), that congressional tolerance for continued state regulation, and an overlap of state and federal authority, may fairly be presumed.

[20] The Ninth Circuit's citation of *Brown* for this proposition, 754 F.2d at 833, n.4, Pet. App. 7a, is plain error. As noted above, the Court in *Brown* expressly held that local interests may *not* supersede federal judgments where there is an actual conflict between the two. 104 S. Ct. at 3187. The Court in *Brown* specifically held that it was proper to balance federal and local interests only in primary jurisdiction preemption cases, *id.*, and not in cases involving an actual federal-state conflict. The Court's ultimate holding in *Brown* turned on whether there was a conflict between federal and state law, and the Court's holding rests upon implicit congressional approval of the state law in question. This holding in no way supports the Ninth Circuit. A finding that no conflict exists between federal and state laws, *see Metropolitan Life Insurance Co. v. Massachusetts*; *Belknap, Inc. v. Hale*, or that Congress intended to tolerate any such conflict, *New York Telephone Co. v. New York State Department of Labor*; *Malone v. White Motor Corp.*, 435

pheral concern" exceptions are solely limited to "primary jurisdiction" cases. *See Belknap, Inc. v. Hale*, 463 U.S. at 498-99; *id.* at 533-34, n.7 (Brennan, J., dissenting); *Operating Engineers Local 926 v. Jones*, 460 U.S. 669, 676 (1983); *Sears, Roebuck & Co. v. Carpenters*, 436 U.S. 180, 188-89, n.13 (1978); *id.* at 220, n.5 (Brennan, J., dissenting); *Farmer v. United Brotherhood of Carpenters*, 430 U.S. 290, 296-97 (1977); *Lodge 76, Machinists*, 427 U.S. at 137-38; *Motor Coach Employees v. Lockridge*, 403 U.S. at 297.[21] Unless application of the Supremacy Clause is to be suspended in the field of labor relations, and congressional determinations in this area are to be accorded less weight than in others, neither the "peripheral concern" nor the "local interest" exception can have any application outside of the "primary jurisdiction" context.

Thus, the Ninth Circuit was simply wrong in attempting to justify the City's conduct either by reference to the City's supposed interest in local transportation, or by the federal government's alleged lack of interest in such matters.[22] The Court has never authorized, indeed has re-

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U.S. 497 (1978), is by no means authority for the proposition that local interests can supersede federal judgments where, as here, an actual conflict exists.

[21] The Ninth Circuit's citation to *Lodge 76* is also misguided. The Court's discussion of the "peripheral concern" exception in *Lodge 76* occurred during an explication of the *Garmon* rule, *compare* 427 U.S. at 137-38 with 427 U.S. at 140 *et seq.*, and does not in any way signify the Court's importation of this inapposite concept into a "free play of economic forces" case. Indeed, each of the cases cited by the Court in *Lodge 76* as an example of the peripheral concern exception—*International Association of Machinists v. Gonzales*, 356 U.S. 617 (1958), *Hanna Mining Co. v. District 2 Marine Engineers*, 382 U.S. 181 (1965), and *Linn v. Plant Guard Workers*, 383 U.S. 53 (1966)—dealt with the scope of the NLRB's jurisdiction, not with whether the conduct in question was affirmatively determined by Congress to be free from all governmental regulation.

[22] There is some reason to doubt that the "local interest" and "perpheral concern" concepts are separate and distinct doctrines, as

peatedly barred, local intervention in the labor disputes of local transit companies where that regulation threatened the "free play of economic forces" guaranteed under federal law. Both in *Bus Employees v. Missouri*, 374 U.S. 74 (1963), and *Bus Employees v. Wisconsin Employment Relations Board*, 340 U.S. 383 (1951), the Court rejected state efforts to intervene in labor disputes involving public transportation companies. The state laws at issue in those cases were undoubtedly viewed by those who enacted them as fully justified by a legitimate local interest in maintaining public transportation services. Yet both laws were held unconstitutional because they conflicted with the right to strike guaranteed by federal labor law. *See Brown v. Hotel & Restaurant Employees*, 104 S. Ct. at 3186 (noting that these decisions overturned state law because of an actual conflict with federal labor protections).

These rulings plainly vindicate the congressional judgment that labor disputes in the transportation industry, as in all others, must be settled by private parties through collective bargaining and resort to economic weapons. As the Court noted in *Bus Employees v. Wisconsin Employment Relations Board*, 340 U.S. at 391-93, in 1947 Congress rejected efforts to ban strikes and to substitute com-

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the Ninth Circuit held. The Court has relied on both concepts in its decisions, *Linn v. Plant Guard Workers*, 383 U.S. 53 (1966), and has consistently linked both concepts together in its rulings. *See, e.g., San Diego Building Trades Council v. Garmon*, 359 U.S. at 243-44; *Motor Coach Employees v. Lockridge*, 403 U.S. at 297-98. The "local interest" concept allows state or local regulation because the state or local concerns are relatively strong, while the "peripheral concern" exception allows such regulation because the federal interest is relatively weak. The two concepts may thus be merely different means of describing the results of federal-state balancing in a given case. In any event, whether these are distinct but complementary doctrines, or merely different manifestations of the same doctrine, both the "local interest" and "peripheral concern" concepts involve balancing of federal and state interests, and thus neither is appropriate in this case.

pulsory arbitration for collective bargaining in the transportation industry. *See* H.R. Rep. No. 245, 80th Cong., 1st Sess. (1947), at 100-107 (criticizing compulsory arbitration aspects of House bill). Indeed, in 1947 Congress rejected several proposals to ban all strikes and impose a regime of compulsory arbitration, *see, e.g.*, 93 Cong. Rec. A1069-1072 (1947) (remarks of Rep. Case), and made clear its intention that except in disputes creating national emergencies, government intervention in labor disputes would be limited to voluntary mediation and conciliation. *See, e.g.*, 93 Cong. Rec. 3950-3952 (1947) (remarks of Sen. Taft); S. Rep. No. 105, 80th Cong., 1st Sess. (1947), at 13-15.[23] Based upon the legislative history, the Court held that Congress deliberately intended to foreclose state intervention in local transit labor disputes. 340 U.S. at 394-95.

It was thus settled long ago that federal labor law applies to labor disputes involving local transportation companies in precisely the same fashion as in all other industries. If the local interest in public transportation provides insufficient warrant to preclude a strike, then it

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[23] Even in the health care industry, where the effect of a labor dispute upon patient care could be disastrous, Congress clearly rejected all attempts to introduce government intervention in the bargaining process. In 1974, when health care institutions were made subject to the Act, Congress considered and rejected several legislative proposals to create extensive fact-finding and compulsory mediation requirements, during which no work stoppages would be allowed, in favor of free collective bargaining and resort to economic weapons in the health care industry. *See* 120 Cong. Rec. 12941-944 (1974) (Sen. Taft); 120 Cong. Rec. 12970-971 (1974) (Sen. Dominick). Moreover, Congress specifically rejected efforts by members of the Senate to exempt their local compulsory arbitration laws from the preemptive impact of the new extension of federal labor law. *See* 120 Cong. Rec. 12946, 12995 (1974) (remarks of Senator Mondale). At every opportunity and in every industry, Congress has rejected the notion of government intrusion into the bargaining process, and has evidenced its preference for free collective bargaining and the private settlement of labor disputes.

similarly provides no warrant for depriving a private employer of its right to weather a strike. Federal law grants to both unions and employers in this industry the right to disagree and the right to resort to economic weapons. It was not within the province of the City of Los Angeles to deny those rights to either party in this dispute.[24]

B. The "Substantive Outcome" Test Espoused By The Ninth Circuit Is Based Upon A Fundamental Misunderstanding Of Federal Labor Law.

The Ninth Circuit's proposed preemption test conflicts with the decisions of this Court, insofar as it would allow substantial state or local control over the collective bargaining process. The court below held that local efforts to coerce employer concessions, and to prevent an employer from relying upon its economic strength in the face of a strike, were permissible so long as the municipality attempted neither "to directly alter the substantive outcome of a labor dispute" nor "to dictate terms of the collective bargaining agreement." 754 F.2d at 833, Pet. App. 8a. This Court, however, has consistently precluded governmental control over the collective bargaining process. The decisions of this Court leave no doubt that preservation of the process, not sanctity of the solution, lies at the heart of the federal labor system designed by Congress.

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[24] The Ninth Circuit's suggestion that the City Council's intervention was permissible because it may have been benignly motivated by a general concern for local transportation is completely misplaced. Whatever the motive of the City Council members—whether or not they truly believed that the public interest is served by "an operating company that has labor peace, that has the kind of drivers that are courteous, and kind to the public, but who are also making a decent living at a decent wage for their families" (J.A. 66)—the means chosen to effectuate those beliefs were plainly inconsistent with federal law. Even if the City was seeking to further transportation goals, it chose to serve those goals by conditioning renewal of Golden State's franchise upon resolution of the labor dispute. That decision was inconsistent with the National Labor Relations Act, whatever its motivation.

This was made most clear last term in *Metropolitan Life Insurance Co. v. Massachusetts*, —— U.S. ——, 105 S. Ct. 2380 (1985). There, the Court rejected an argument that a state law which interfered with the end result of the bargaining process, by mandating that all employers in the state provide certain minimum mental health insurance benefits, was equally to be condemned with law interfering with the process itself.

> The NLRA is concerned primarily with establishing an equitable process for determining terms and conditions of employment, and not with particular substantive terms of the bargain that is struck when the parties are negotiating from relatively equal positions.

105 S. Ct. at 2396.[25] The Court thus held that the state *could* regulate this one aspect of the outcome of negotiations, so long as its efforts did not distort the bilateral process by which the parties settled other differences between them.

The key, then, under federal law is not protection of the results of the bargain, but of the process by which the bargain is struck.

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[25] Citing Cox, *Recent Developments in Federal Labor Law Preemption*, 41 Ohio St. L.J. 277, 297 (1980):

> The NLRA is primarily concerned with a *method* of establishing terms and conditions of employment; it protects and even encourages substituting negotiations between the employer and the employees as a group, backed by freedom to resort to economic weapons, in place of the older methods of unilateral dictation or individual bargaining. There is not the slightest reason to suppose that Congress intended to allow unions and employers, acting jointly, to establish employment conditions that a state forbids employers to establish unilaterally or by individual bargain.

See also Cox, *Federalism in the Law of Labor Relations*, 67 Harv. L. Rev. 1297, 1325 (1954); *Comment: The Radical Potential of the Wagner Act: The Duty to Bargain Collectively*, 129 U. Pa. L. Rev. 1392, 1402 (1981).

> Within the area in which collective bargaining was required, Congress was not concerned with the substantive terms upon which the parties agreed . . . . The purposes of the Acts are served by bringing the parties together and establishing conditions under which they are to work out their agreement themselves.

Local 24, Teamsters v. Oliver, 358 U.S. at 295 (citation omitted). The National Labor Relations Act establishes a framework for dispute resolution, allowing the parties to reach their own accords through collective bargaining. Whatever latitude the states may have to prescribe minimum terms and conditions of employment, they have absolutely no authority to meddle with the collective bargaining process itself. The decision below, by allowing interference with the process, and prohibiting only explicit attempts to dictate the outcome of bargaining, mistakenly reorders the basic priorities under federal law.

Indeed, the Ninth Circuit failed to recognize that local control over the bargaining process necessarily implies substantial local control over the results of that process. In *NLRB v. Insurance Agents' International Union*, 361 U.S. 477, 490 (1960), the Court recognized this basic concept, and rejected the artificial distinction between government control over the "substantive outcome" of a labor dispute and government intrusion into the bargaining process:

> Thus the Board in the guise of determining good or bad faith in negotiations could regulate what economic weapons a party might summon to its aid. And if the Board would regulate the choice of economic weapons that may be used as part of collective bargaining, it would be in a position to exercise considerable influence upon the substantive terms on which the parties contract. As the parties' own devices became more limited, the Government might have to enter even more directly into the negotiation of collective agreements. Our labor policy is not

> presently erected on a foundation of government control of the results of negotiations. See S. Rep. No. 105, 80th Cong., 1st Sess., p. 2. Nor does it contain a charter for the National Labor Relations Board to act at large in equalizing disparities of bargaining power between employer and union.

Accord, Lodge 76, Machinists, 427 U.S. at 153; *New York Telephone Co. v. New York State Department of Labor*, 440 U.S. 519, 552-53 (1979) (Powell, J., dissenting).

The Ninth Circuit thus failed to appreciate that the results of negotiations are directly determined by the relative strength of the negotiating parties, and that by altering the balance of power between the parties, the City was necessarily controlling the "substantive outcome" of negotiations. In enacting and later amending the Wagner Act, Congress intended to ensure a relative balance of power between management and labor in order to make it possible for management and labor to resolve their differences through a system of industrial self-government founded upon free and voluntary collective bargaining. Industrial harmony under our system requires that collective bargaining agreements reflect the parties' strength, their own "balance of power." The relative balance between the Teamsters and Golden State was completely destroyed through the political process by the City's demand that Golden State settle or go out of business.

C. The City's Direct Intervention In This Labor Dispute Is Not Consistent With Any Of This Court's Decisions.

This Court has decided several free play of economic forces cases in which challenged local regulation was allowed to stand because there was no conflict between the framework of federal labor law and the state law at issue. *See Metropolitan Life Insurance Co. v. Massa-*

chusetts, —— U.S. ——, 105 S. Ct. 2380 (1985) (state prescription of minimum mental health benefits upheld because state regulation did not affect collective bargaining process); *Belknap, Inc. v. Hale*, 463 U.S. 491 (1983) (strike replacements' breach of contract suit against employer does not affect employer's right to hire replacements or to bargain with the union); *and see New York Telephone Co. v. New York State Department of Labor*, 440 U.S. 519 (1979) (payment of unemployment benefits to long-term strikers held not preempted). Each of these cases dealt with a generally applicable state law, born of interests independent of a particular labor dispute, that was challenged because it had an indirect impact upon the balance of power between management and labor. This case, by contrast, involves direct intervention in a specific labor dispute. Moreover, the City's conduct did not merely create a subtle shift in the balance of power between Golden State and the Teamsters, but directly denied Golden State basic freedoms guaranteed by federal law.

This case plainly does not involve a neutral statute of the sort approved in *Metropolitan Life Insurance Co. v. Massachusetts*. The City's direct intervention in this specific dispute stands in marked contrast to a state law of general applicability establishing minimum terms and conditions of employment uniformly applicable to union and non-union employers throughout the state. *See* Cox, *Recent Developments in Federal Labor Law Preemption*, 41 Ohio St. L.J. 277, 295-96 (1980).[26] Management and labor may not be automatically exempt from all

[26] Welfare, social security, and unemployment compensation all have substantial effects upon such contests because, like many other laws, they may affect the relative bargaining power of the parties to the contest. But their effects are indirect. They belong in a different sphere. They were part of the context of the NLRA and the LMRA, not part of their subject matter.

Id. at 296.

state minimum standards legislation, but this fact cannot authorize local intervention in a specific labor dispute which penalizes one party for its stance in collective bargaining.[27]

Similarly, the plain conflict between the City's conduct and Golden State's federally-guaranteed rights, explored at length above, distinguishes this case from decisions such as *Belknap, Inc. v. Hale*. There, the Court found no conflict between a state breach of contract suit brought by strike replacements and federal labor law. The Court held that the federal right to hire permanent replacements did not embrace the further right to mis-

[27] The Ninth Circuit's reliance upon *Massachusetts Nursing Association v. Dukakis*, 726 F.2d 41 (1st Cir. 1984), and *Amalgamated Transit Union v. Byrne*, 568 F.2d 1025 (3d Cir. 1977), is misplaced for this same reason. The First Circuit in *Dukakis* upheld a Massachusetts hospital cost-containment statute because the law had no impact upon the collective bargaining process. 726 F.2d at 43. The decision thus merely presages the Court's holding in *Metropolitan Life Insurance Co. v. Massachusetts*, and is persuasive authority for the proposition that local conduct affecting the bargaining process itself is unconstitutional.

In *Byrne*, the state refused to grant subsidies to transit companies that agreed to unlimited cost-of-living clauses in collective bargaining. *Byrne* thus involved the state acting as a proprietor or "private consumer," 568 F.2d at 1029, rather than as a regulator as in this case. *See also Gould, Inc. v. Wisconsin Department of Labor, Industry and Human Relations*, 750 F.2d 608 (7th Cir. 1985), *prob. juris. noted*, —— U.S. ——, 105 S. Ct. 2365 (No. 84-1484) (1985); *Image Carrier Corp. v. Beame*, 567 F.2d 1197 (2d Cir. 1977), *cert. denied*, 440 U.S. 979 (1979). State subsidies were, in effect, a part of the background within which bargaining took place, and the indirect effects of the state's actions were therefore permissible. To the extent that either *Dukakis* and *Byrne* attempt to justify either attempts to coerce agreement or other local regulation on the basis of balancing federal and local interests, they are doctrinally wrong. *See also Gould, Inc.*, 750 F.2d at 611, n.3. Neither *Dukakis* nor *Byrne* stand as authority for the proposition that a state or municipality can drive an employer out of business unless he forfeits federally-protected rights, for neither case involved such a situation.

lead those strike replacements into believing their employment was permanent.

In this case, by contrast, the City's conduct did not merely seek to hold an employer liable to third parties for the allegedly improper exercise of a federal right, conduct that Congress can hardly be said to have authorized. Here, Golden State did precisely what it was entitled to under federal law. It did not misuse its federal rights, or injure innocent third parties, in any way. Nevertheless, the City forced Golden State to choose between its federally-guaranteed rights and its continued existence. The actual conflict between the City's conduct and federal labor law in this case is apparent, and is not subject to reasonable debate. *Compare Brown v. Hotel & Restaurant Employees*, 104 S. Ct. at 3192 (remanding for further determination of conflict issue); *id.* at 3192-93 (White, J., dissenting).[28]

In *New York Telephone Co. v. New York State Department of Labor*, the state regulatory scheme clearly had an effect on the economic balance between management and labor, insofar as payment of unemployment benefits to strikers prolonged their ability to remain on strike, and assessment of management for the costs of the benefits appeared to penalize the employer. Nevertheless, the entire scheme was part of the larger state unemployment compensation program. While the Court sustained the state program, each member of the Court who concluded that the New York law was permissible also found that the scheme enjoyed the implicit approval of Congress based upon the legislative history of the Social Security Act of 1935. *See New York Telephone*, 440 U.S. at 534-40 (Stevens, J., joined by White, J. and Rehnquist, J.); *id.* at 546-47 (Brennan, J., concurring

[28] As noted above, in the major issue in *Brown* there was no conflict between state and federal law because Congress had evidenced its intention to tolerate state regulation of the qualifications of union officials.

in the result); *id.* at 547, 549, 551 (Blackmun, J., joined by Marshall, J., concurring in the judgment). As described last year in *Metropolitan Life Insurance Co. v. Massachusetts*:

> A majority of the Justices [in *New York Telephone*] found the state law not preempted, on the ground that the legislative history of the Social Security Act of 1935, along with other federal legislation, suggested that Congress had decided to permit a State to pay unemployment benefits to strikers.

105 S.Ct. at 2395.

More significantly for purposes of this case, a majority of the Court in *New York Telephone* indicated that they would hold the alteration of the parties' bargaining power in that case preempted were it not for the tacit congressional approval of state unemployment compensation authority. *See New York Telephone*, 440 U.S. at 549-51 (Blackmun, J., concurring in the judgment); *id.* at 546-47 (Brennan, J., concurring in the result); *id.* at 551-67 (Powell, J., dissenting). Surely the effect of the City's conduct upon Golden State, termination of its business, was far more severe than the pecuniary loss suffered by New York Telephone Company. Moreover, the City's denial of the right to bargain free from government coercion, and its preclusion of Golden State's reliance upon its economic strength, is of a different magnitude than the indirect harm sustained by New York Telephone Company. The City's intervention was a direct regulation of private conduct in the labor-management field, and did not even purport to represent a broadly applicable public welfare judgment based upon some larger conception of the public good. *See New York Telephone*, 440 U.S. at 532-33, and n.22. On the contrary, this coercive intervention was geared to the specific labor dispute between Golden State and the Teamsters, and denied one party basic freedoms guaranteed by federal labor law.

Thus, this case does not in any respect involve a "'neutral' state statute . . . which may have an inci-

dental effect on relative bargaining strength," *Lodge 76, Machinists*, 427 U.S. at 156 (Powell, J., concurring). To be sure, the City's action did alter the relative bargaining position of the parties. But the defect in the City's action in this case was even more fundamental. The City directly abridged Golden State's exercise of prerogatives expressly preserved to it by Congress. No decision of this Court even remotely suggests that such conduct is constitutional.

D. The Opinion Below Would Allow Massive Local Entanglement In Labor Disputes.

The analysis employed below threatens a radical restructuring of collective bargaining in any industry subject to local regulation. Under the reasoning of the Ninth Circuit, so long as the local government does not "attempt to dictate terms of the collective bargaining agreement," local government, in support of its vision of the "public interest," may coerce immediate resolution of a labor dispute by threatening to drive an employer out of business. There is nothing unique about transportation that would warrant the specialized treatment that the Ninth Circuit afforded it. If local government officials can insist that a taxi company resolve a labor dispute as a condition of franchise renewal, then the local interest in distribution of alcoholic beverages would justify similar measures where a restaurant's liquor license was subject to renewal. The state's interest in education would permit public officials to hold the license of a private school hostage where the school was engaged in a dispute with its striking teachers. The same result would apply to hairdressing, and milk deliveries. That result is inconsistent with the nationwide framework for private resolution of labor disputes established by Congress.[29]

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[29] That result is also inconsistent with recent preemption cases outside the labor field, in which the Court refused to allow equally strong local interests to justify state or local regulation that was in conflict with federal law. See, *e.g., Capital Cities Cable, Inc. v. Crisp*, —— U.S. ——, 104 S. Ct. 2694 (1984) (local interest in consumption of alcoholic beverages, embodied in 21st Amendment, does not override federal communications law); *Michigan Canners & Freezers Association v. Agricultural Marketing & Bargaining Board*, —— U.S. ——, 104 S. Ct. 2518 (1984) (local concern over sales of food does not override federal Agricultural Fair Practices Act); *Fidelity Federal Savings & Loan Association v. de la Cuesta*, 458 U.S. 141 (1982) (local interest in real property law cannot override Federal Home Loan Bank Board regulations).

Nowhere is this danger more clearly revealed than by what happened in this case. Here, the Teamsters specifically requested that the City withhold Golden State's franchise renewal, and then sought to use the threat to franchise renewal as leverage in bargaining. The City's decision was a powerful tool that plainly distorted the bargaining process, as the Ninth Circuit found. To be sure, the City's threat to Golden State's franchise posed some risk to the Teamsters in the unlikely event that Golden State refused to succumb to the threat of losing its business. But the Teamsters purposefully engaged in this dangerous strategy, in order to use the threat of franchise denial as leverage in its negotiations. The union was apparently willing to encourage termination of the franchise in the hope that either Golden State would settle on the union's terms, or that the Teamsters would fare better with whomever the City appointed to succeed Golden State as the franchisee. Once local intervention of this sort is permitted, similar political gambits will become commonplace.[30]

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[30] There is no reason why this entanglement would always work to the benefit of organized labor. Political pressure could equally well be applied against labor in any industry in which individual employees require state or local licenses or permits to perform their jobs. For example, the City could have threatened to revoke the driver's licenses or taxicab permits of Golden State's drivers unless the strike were immediately settled. Far from being a one-sided weapon, application of political power in a labor dispute could be a potent tool for either management or labor, depending upon which side has greater political influence and what schemes to apply pressure can be devised in a particular industry.

The decision below thus threatens to shift the arena for negotiations from the bargaining table to the city council chambers, and to transform the principal weapon in the armory of organized labor from the economic force of the strike into the political clout of the local ordinance. The ability to enlist the aid of government to penalize the exercise of economic weaponry by one's bargaining table opponent is a powerful weapon that is ultimately inconsistent with Congress's idea that the threat of economic warfare would eventually lead to labor peace. The Court has previously rejected management efforts to enlist government penalties against labor for the exercise of lawful economic weapons, and such politicization of the bargaining process is no less improper when the party able to avail itself of government assistance is labor.[31]

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[31] In *Lodge 76, Machinists*, 427 U.S. at 148-49, the Court discussed the employer's effort to use the state's legislative power against labor in the course of a labor dispute:

> The employer in this case invoked the Wisconsin law because it was unable to overcome the Union tactic with its own economic self-help means . . . . But the economic weakness of the affected party cannot justify state aid contrary to federal law. . . .

In the instant case, the Teamsters engaged in an analogous strategy —to enlist the aid of the City in order to obtain more leverage than the union could through its strike.

CONCLUSION

Free and voluntary collective bargaining, in which disputes are resolved privately at the bargaining table, is the cornerstone of our labor system. Government coercion is its antithesis. The decision below undermines the very foundations of industrial self-government, is inconsistent with the principles underlying the National Labor Relations Act, and should be reversed.

Respectfully submitted,

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SUPPLEMENTAL BRIEF

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

No. 84-1644

(13)

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

GOLDEN STATE TRANSIT CORPORATION,

Petitioner,

v.

CITY OF LOS ANGELES,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

RESPONSE OF PETITIONER TO AMICI'S MOTION FOR DIVIDED ARGUMENT

Petitioner recognizes that whether the Court chooses to allow amici to participate in a divided argument is primarily an issue of institutional concern, and Petitioner would ordinarily welcome the participation of so distinguished an advocate as Mr. Lee on behalf of Respondent. Nevertheless, Petitioner does not believe that divided argument is proper in this situation, and several of the arguments and allegations made in amici's Motion require a response from Petitioner.

1. First, amici have in no way explained how their interests diverge from those of Respondent, nor have they stated how their argument would assist the Court. In fact, the positions and arguments that amici seek to advance will undoubtedly be precisely the same as those advocated by the Respondent. This Court's Rule 38.4 specifies that "[d]ivided arguments are not favored", suggesting strong

institutional interests in a single comprehensive argument. See generally Stern and Gressman, Supreme Court Pratice, at 749-50 (1978). In this case, while Petitioner has great respect for the amici, it is by no means clear that they have satisfied their burden under Rule 38.4 of setting "forth with specificity" why more than one counsel should be heard, nor have they explained why their concerns cannot adequately be addressed in their brief.[1/] The argument that amici's participation is justified because this case raises "important federalism concerns" can be made in virtually every federal preemption case, and thus fails to explain why divided argument is especially appropriate here.

2. Second, amici have taken considerable liberty in characterizing the issues in this case in order to advance their argument that this case threatens the normal police powers of state and local governments. This petition simply does not involve a "routine decision" by a local body with merely "indirect effects" on local labor relations, as even a cursory glance at the petition, and the decisions below, reveals. Petitioner will reserve further comment on amici's characterization of the case for its reply brief and argument, but wishes to underscore its objection to amici's preliminary arguments on the merits of the case.

3. Finally, to the extent it is relevant, contrary to the assertion of the amici, Motion at 3, this is not the first time that the State and Local Legal Center has sought argument time. These same amici, raising many of the same claims presented in this Motion, sought to

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1/ Petitioner long ago consented to the filing of amici's brief. Petitioner was not consulted, however, with respect to the instant Motion.

argue last Term in Garcia v. San Antonio Metropolitan Transit Authority, 105 S. Ct. 1005 (1985), and their request was denied. 105 S. Ct. 47 (1984).

Respectfully submitted,

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September 6, 1985

RESPONDENT'S

BRIEF

No. 84-1644

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1985

GOLDEN STATE TRANSIT CORPORATION,
Petitioner,

VS.

CITY OF LOS ANGELES,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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No. 84-1644

In the Supreme Court

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OCTOBER TERM, 1985

GOLDEN STATE TRANSIT CORPORATION,
Petitioner,

VS.

CITY OF LOS ANGELES,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF FOR THE RESPONDENT

STATEMENT OF THE CASE

Background and Facts

Golden State Transit Corporation, Petitioner, ("Golden State") has characterized the City's action in this case as refusing to renew Golden State's taxicab franchise unless Golden State either capitulated to the demands of its employees and immediately resolve a peaceful strike initiated by the Teamsters Union, or forfeit its right to continue doing business within the City.

In 1980, there were thirteen companies holding taxicab franchises issued by the City. The franchises of all thirteen of these companies were due to expire on October 29, 1980. (Pet. App. 27a.)

On March 31, 1980, Golden State[1] applied for renewal of its franchise. (J.A. 20-21.) The other twelve franchise holders also applied for renewals on, or about, that date. (Pet. App. 27a.) These existing franchises were extended several times in order to allow the City's Department of Transportation, Board of Transportation Commissioners and the Transportation and Traffic Committee of the City Council to consider the renewal request. (J.A. 22-23, 26-29.) Those three bodies concluded that Golden State was in full compliance with the terms and conditions of its franchise, and each recommended to the City Council that Golden State be granted a franchise renewal until March 31, 1985. (J.A. 24-25, 30-35, 36-39.)

An ordinance approving Golden State's franchise renewal to March 31, 1985, along with ordinances approving franchise renewals for five of the other taxicab companies for the same period of time, was placed on the City calendar for February 11, 1981. (J.A. 36-43.)

Golden State's drivers, who were represented by the Teamster's Union, went out on strike on February 11, 1981. (Pet. App. 28a, J.A. 51.)

At the February 11, 1981, City Council meeting, all franchises scheduled for consideration, except Golden State, were renewed. (J.A. 36-43.) The application of Golden State's request for renewal was deferred until February 17, 1981, and on that date the Council voted to extend the franchise until April 30, 1981, provided the Council expressly found, on or before March 27, 1981, that the extension was "in the best interest of the City."

[1]Golden State did business as "Yellow Cab." Consequently the record and opinion of the courts refer at times to Golden State as Yellow Cab.

No other franchise was subject to a similar requirement or condition. (Pet. App. 28a.)

The Golden State application for renewal was next heard by the City Council at its meeting of March 23, 1981. Councilwoman Pat Russell, at this meeting, introduced a motion to find that it was in the best interest of the City to extend Golden State's franchise to April 30, 1981. (J.A. 44.) The vote on the motion came after a public hearing. (J.A. 58-86.) The motion failed of adoption by a vote of eleven to one against. (J.A. 46.) The minutes on that page of the record show the roll call to be two in favor and ten against. The minutes go on to say, however, that one of the Councilpersons, Mr. Gibson, indicated that his vote was no, making it eleven votes against the motion. The defeat of this motion resulted in Golden State's franchise terminating by its own terms, on March 31, 1981.[2] (J.A. 89, 109.)

At the March 23rd Council hearing, representatives of the Teamsters and AFL-CIO did urge that Golden State's franchise not be renewed. (J.A. 60-64.)

During the course of the hearing, three of the Councilmembers were critical of the status of the labor negotiations. (J.A. 65-67, 70-72, 74-75.) The labor dispute was not the only thing discussed, however, at the Council hearing.

David Shapiro, the President of United Independent Taxi Drivers Association, stated at the hearing that with the non-operation of Golden State taxicabs drivers were able to make, for the first time, a decent minimal living. He further stated that the doormen of the major hotels

[2]Procedurally, the City Council voted not to postpone consideration of the renewal for 30 more days. But the effect of that decision was to deny renewal.

had reported to him that they were getting a better quality of service with the non-operation of Golden State. (J.A. 62-63.)

Councilman Zev Yaroslavsky, during the course of the hearing, inquired of Don Howery, the General Manager of the City's Department of Transportation, the Department which administers the regulation of taxicabs on behalf of the City, as to whether since the strike there had been enough taxicabs to pick up the slack which had been left by the absence of Golden State's cabs. Mr. Howery responded that they had not received any complaints as to lack of service. (J.A. 69-71.) Mr. Howery further testified that prior to the Golden State strike there were too many taxicabs operating in the City. (J.A. 70.)

Councilman Yaroslavsky commented that the City might actually be creating a more healthy market place in the taxicab industry by the non-renewal of the franchise. Another one of the Councilmembers stated he would vote against the extension in order to remain neutral in the labor dispute.[3] The motion to, in effect, not renew, which was defeated by the Council (J.A. 44), made no reference to the labor dispute.

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[3]Councilman Bernardi stated, "Let me say this, we've been, we're being [sic] accused and we will be [sic] accused I guess from, every angle if we continue this for another 30 days, we'll be accused of being on the side of the, of the owner of Yellow Cab, if we refuse to continue, then we are accused of being on the side of the cab drivers, I don't know how having them stay out of work would be on their side, they are going to be out of a job. But I, I think this is really a position we've got to take and [sic] would be to remain neutral. . . . [sic] I am going to vote to remain neutral so I am going to have to vote against Mrs. Russell's extension." (J.A. 82-83.)

PROCEEDINGS BELOW

Golden State filed their initial complaint in this action alleging four causes of action based on alleged violations of its constitutional guarantees of due process and equal protection. It also alleged that the City unlawfully interfered in a labor dispute. (J.A. 5.) On application of Golden State, the district court granted Golden State's motion for a preliminary injunction. *Golden State Transit Corp. v. City of Los Angeles,* 520 F.Supp. 191 (C.D. Cal. 1981). The Court of Appeals subsequently vacated the preliminary injunction. *Golden State Transit Corp. v. City of Los Angeles,* 686 F.2d 758 (9th Cir. 1982), cert. denied, 459 U.S. 1105 (1983).

The complaint was eventually amended adding a fifth cause of action, alleging anti-trust claims. (Second Amended Complaint, R. 67.) Golden State then made a motion for partial summary judgment as to the anti-trust claims. The district court, in considering the matter, granted a partial summary judgment in favor of the City. The Court of Appeals affirmed the judgment. *Golden State Transit Corp. v. City of Los Angeles,* 726 F.2d 1430 (9th Cir. 1984), cert. denied, ____ U.S. ____, 105 S.Ct. 1865 (1985).

The City subsequently made a motion for partial summary judgment as to the remaining causes of action, one through four. (R. 107.) Golden State, in opposition, contended there existed two genuine issues of material fact; the due process issue and the preemption issue. (J.A. 135.) Golden State indicated it was not pursuing its equal protection claim. (Pet. App. 16a, Concl. of Law No. 2.) The City's motion for partial summary judgment was granted (Pet. App. 11a) and the Court of Appeals affirmed. *Golden State Transit Corp. v. City of Los Angeles,*

754 F.2d 830 (9th Cir. 1985). Review was sought by Golden State of this Court as to the preemption issue.

SUMMARY OF ARGUMENT

The City, through its legislative body, the City Council, was acting on an application by Golden State for a new taxicab franchise to replace an expiring one. The City Council denied the request. At the time of the denial, the drivers of Golden State, represented by the Teamsters Union, were on strike. Golden State contends that the City Council's action was motivated by an attempt to apply coercive pressure on Golden State so that they would accede to the Teamsters demands. Yet the City Council's action, denying the request, made no reference to the labor dispute between Golden State and the Teamsters.

Golden State offers "evidence" in support of their characterization of the City's action based on statements made by representatives of the Teamsters at the Council hearing urging the City Council not to renew the franchise. But merely because the Teamsters, in the exercise of their right to petition the City Government, urged that the franchise not be renewed does not logically allow for the conclusion that their statements determined the Council's vote.

Golden State also argues that because certain Council members (three of the eleven who voted against renewal) made reference to the strike the City Council's action was as characterized by Golden State. Yet what motivates one legislator to make a speech about a subject is not necessarily what motivates another on how he or she votes. The courts, consequently, will avoid attempting to discern legislative motive. The record in this case does not even support the question as presented by Golden State to the

court, namely that the City Council's action was meant to have Golden State accede to the Teamster's demand.

The City, in acting upon the application for renewal, was exercising its legitimate regulatory powers. It is merely happenstance that the City, in so acting, was "thrust into" a labor dispute. It was not the intent of Congress, in enacting the National Labor Relations Act, that, because of this labor dispute, the City was required to grant the franchise. Yet that is, in effect, Golden State's position. They contend that the effect of the denial was to deprive them of an economic weapon. Adopting such logic the counter argument is that if the City has granted them the franchise the City would have been assisting Golden State in their labor dispute with the Teamsters. In other words, no matter what the City did it would have arguably been preempted.

Golden State contends the City interfered with their right of self-help. But they were not seeking self-help. Instead they were seeking the assistance of the City through the grant of a new franchise. The City did not interfere in a labor dispute. Rather, in the exercise of its legitimate regulatory powers, it took an action that happened to have an impact on the labor dispute. The City was not preempted from so acting.

Golden State is contending that they were entitled to a taxicab franchise which would have had a term until March 31, 1985. Golden State is seeking injunctive and declaratory relief as a result of the denial of this franchise. Since that date is past, the issue is now moot.

ARGUMENT

I

THE CASE IS MOOT

Golden State alleges in the First Cause of Action of the Second Amended Complaint, the current complaint in this action (R. 67, p. 16), that the City violated the Supremacy Clause by taking actions allegedly in conflict with the National Labor Relations Act. Golden State alleges in the Second Cause of Action, seeking damages, that the City deprived Golden State of its ability to fully bargain with the union without due process of law. (R. 67, p. 18, para. 59.) But Golden State, in their petition for certiorari states that it is not seeking certiorari on the alleged due process and equal protection violations.

The Third and Fourth Causes of Action also make reference to the labor dispute but these causes of action, like the First Cause of Action, are seeking declaratory and injunctive relief.

The Second Amended Complaint alleges Five Causes of Action. The City previously obtained a partial summary judgment as to the Fifth Cause of Action, alleging anti-trust claims, which was affirmed. *Golden State Transit v. City of Los Angeles*, 726 F.2d 1430 (9th Cir. 1984), cert. denied, ___ U.S. ___, 105 S.Ct. 1865 (1985).

The recommendation that was placed on the City Council calendar on February 11, 1981, was to grant Golden State a franchise, replacing the expiring one, until March 31, 1985. (Pet. Brief p. 3, J.A. 36-43.) Since the March 31, 1985 date is past, the issues presented by the First, Third and Fourth Cause of Action allegations in reference to the City's non-renewal of the franchise are no longer "live". A case is moot when the issues presented are no longer "live" or the parties lack a legally cognizable

interest in the outcome. *County of Los Angeles v. Davis*, 440 U.S. 625, 631 (1979). This case, therefore, is moot.

II

THE CITY'S REGULATORY ACTION DID NOT INTERFERE IN AN ONGOING LABOR DISPUTE.

Golden State proposes that the question before the Court is whether a municipality may, consistent with the policies and principles of federal labor law, insist that a private employer immediately settle a labor dispute and resolve a peaceful strike or forfeit its right to continue to do business. However, the record below does not even present this question.

A. The City Did Not Condition The Renewal Of Golden State's Taxicab Franchise Upon A Settling Of The Labor Dispute.

Golden State's franchise expired, by its own terms, March 31, 1981. (J.A. 89, 109.) Although Golden State had applied for a new franchise to replace an expiring one (J.A. 20-21), the granting of that franchise was, by the language of the City Charter,[4] discretionary. *Golden State Transit Corporation v. City of Los Angeles*, 686 F.2d 758, 760(4) (9th Cir. 1982). Pet. App. 22a. When a motion to renew the franchise was defeated by a vote of the City Council,[5] the City, in effect, denied the renewal. See ftn. 2, *supra*.

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[4] "The City may, by ordinance, adopted five years or less prior to the expiration of any franchise, grant to the holder of such franchise about to expire, such new franchise not to exceed ten years from the date of expiration of the franchise it replaces." Los Angeles City Charter, Sec. 3, Subd. 8, Para. D (Pet. App. 13a).

[5] The specific action of the City Council in not granting the renewal franchise was the defeat of a motion, by an eleven to one vote, to find

The City Council action was a defeat of a motion to grant a renewal franchise. It did not impose any condition or requirement upon Golden State. Yet Golden State would characterize the action taken by the City Council as forcing Golden State to exceed to the Teamsters' demands in order to save its business. (Pet. Brief 20.) The record in this case does not support that characterization.

Part of the "evidence" Golden State relies upon to support its characterization are actions taken, and statements made, by the Teamsters and other union representatives.

Golden State makes numerous references to statements addressed to City officials by the Teamsters and other union officials representing their position concerning their desire that the City interfere in the labor dispute. They argue, without logic, that mere statements, as well as actions by the Teamsters, determined the Council's vote on the franchise renewal.

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it was in the City's best interest to extend Golden State's franchise until April 30, 1981. (J.A. 44.) The NLRB, in its brief, ftn. 20, incorrectly refers to the City's action as a "termination" of the franchise. The Court of Appeals decision stated that the City insisted upon resolution of the dispute as a condition to franchise renewal. *Golden State*, 754 F.2d at 833, Pet. App. 8a. The District Court, in granting the summary judgment, made no such finding. Pet. App. 11a-17a. The Supreme Court is not bound by this statement of the Court of Appeals or by similar findings of fact and statements made by the district court, in granting the preliminary injunction. A review of the granting of a motion for summary judgment is de novo. *Luckett v. Bethlehem Steel Corp.*, 618 F.2d 1373, 1377 (10th Cir. 1980); *McAllister v. United States*, 348 U.S. 19, 20-21 (1954). Thus, the Supreme Court should conduct an independent factual review of the record in this regard. *Adickes v. Kress and Co.*, 398 U.S. 144, 153 (1970).

This Court, in a case involving the Sherman Act, *Eastern R.R. Conference v. Noerr Motor Freight*, 365 U.S. 127, 137 (1961), stated:

> "In a representative democracy such as this, these branches of government (legislature and executive) act on behalf of the people and, to a very large extent, the whole concept of representation depends upon the ability of the people to make their wishes known to their representatives."

The court, in *Noerr*, further stated, in reference to the Sherman Act:

> "The right to petition is one of the freedoms protected by the Bill of Rights and we cannot, of course, lightly impute to Congress an intent to invade these freedoms." p. 138.

In *United Mine Workers v. Pennington*, 381 U.S. 657, 670 (1965), this Court concluded that *Noerr* shielded from the Sherman Act a concerted effort to influence public officials regardless of interest or purpose.

Likewise, the Teamsters and other union representatives had a right to express their opinions and wishes to City officials. The exercise of this right should not result in the branding of the Council's action as an unlawful interference in a labor dispute.

To allow for a legislative body's action to be defined, as Golden State would, by what was said to the City Council at a public hearing by third parties could lead some to propose that a legislative body prohibit certain groups or persons from speaking because their views might be used to attack the final action of that legislative body. Such an action would have grave constitutional implications. In our free society the judicial response to such a proposal must be two-fold. First, that kind of prohibition cannot be

allowed. Second, views expressed to a legislative body during the course of public debate cannot be used as evidence of legislative intent.

In addition, Golden State relies, in their characterization of the Council's action, upon certain statements made by Councilmembers at the public hearing where the vote was taken resulting in not granting Golden State a renewal franchise.

The Council action, however, made no reference one way or the other to the labor dispute. Golden State's characterization of the Council's action would have the court look at the alleged motive of the eleven Councilmembers who voted against the motion. Such a venture can prove illusory. The various Councilmembers may have had varying reasons for voting against the motion and a particular Councilmember may have had more than one reason for so voting. For a Councilmember to go back and try to reconstruct his or her thought process at the time he or she casts his or her vote would be difficult, if not impossible. The courts, however, will not judge legislative action by the varied factors which may have determined the legislative votes and thus will not generally inquire into the alleged motives of legislators.[6] *Daniel v. Family Security Life Insurance Company*, 336 U.S. 220, 224 (1949).[7] This Court has recognized that

[6]The award of a franchise, at least in California, is a legislative act. *Pacific Rock, etc. Company v. City of Upland*, 67 Cal.2d 666, 668(2); 63 Cal.Rptr. 572, 573(1) (1967). The City Council is the legislative body of the City of Los Angeles. City Charter, Sec. 21. (J.A. 137.)

[7]There are certain limited and well-defined exceptions to this rule, specifically a statute which is, in effect, a Bill of Attainder, *United States v. O'Brien*, 391 U.S. 367, 383 (ftn. 30) (1983); when there is an allegation of a racially discriminatory intent, *Arlington Heights v. Metro. Housing Corp.*, 429 U.S. 252, 264-265 (1977).

the inquiry into legislative motive is often an unsatisfactory venture. *Pacific Gas and Electric v. Energy Resource Comm.*, 461 U.S. 190, 216 (1983); *United States v. O'Brien*, 391 U.S. 367, 383 (1968).[8]

This Court, in *O'Brien*, stated that what motivates one legislator to make a speech about a statute is not necessarily what motivates another to enact it. 391 U.S. at 384. To adopt the logic of Golden State's argument would lead to the conclusion that because there were three Councilmembers who, in their statements during the course of the public hearing, called for a resolution of the strike, the Council's action, itself, required a resolution of the strike as a condition for the renewal of the franchise, and that, consequently, the action was invalid. To adopt such an approach would mean that because of the statements of a limited number of the legislative body the discretion of the legislative body, as a whole, becomes limited as to how they can act. In the present case, for example, Golden State is arguing, in effect, that because of the statements of certain Councilmembers the City

[8]The District Court, in initially granting Golden State a preliminary injunction, did find that "the City's true purpose in declining to renew plaintiffs' [Yellow Cab's] franchise" was "substantially to influence the economic (as opposed to the political) weapons of Yellow Cab and its Teamster drivers in their labor negotiations efforts, by diminishing the economic power of Yellow Cab and increasing the economic power of the drivers." J.A. 119, Finding No. 28. The Court of Appeals, in vacating the preliminary injunction, stated that courts are not permitted to inquire into the alleged motives of legislators. *Golden State Transit v. City of Los Angeles*, 686 F.2d 758, 759 (9th Cir. 1982) cert. denied, 459 U.S. 1125. Pet. App. 20a. It should be noted that the Court of Appeals incorrectly quoted the language of the District Court's finding. The Court of Appeals referred to the "diminishing" of "the economic power of the drivers" when it meant "the economic power of Yellow Cab." The latter was the language of the District Court.

Council, as a body, was precluded from not renewing the franchise. Such a rationale, however, could have a chilling effect on legislative discussions. Legislators would be hesitant to have a free and open discussion for fear of what they say being attributed to the legislative body as a whole.

In his concurring opinion in the Court of Appeal decision, 754 F.2d at 834-835, Pet. App. 10a, Judge Norris noted that Golden State had cited no evidence giving rise to a triable issue of fact that the City's purpose in refusing to renew the franchise was to assist the Teamsters in their labor dispute with Golden State. The final Council action made no reference to the labor dispute and, for the reasons stated above, the record does not support Golden State's characterization of the City Council's action. Furthermore there was testimony and discussion at the Council hearing, prior to the Council vote, on other than just the labor dispute.[9]

B. The City Was Not Preempted From Exercising Its Regulatory Powers Because A Labor Dispute Was Pending.

The actions this Court has found preempted under the National Labor Relations Act has involved situations where the governmental body, be it a court or state

[9]There was testimony that despite the cessation of Golden State's operations there were sufficient taxicabs on the streets, and that since the cessation of their operations drivers were able, for the first time, to make a minimal decent living, and the doormen of the major hotels had reported a better quality of taxicab service. (J.A. 62-63.) Based on such testimony the City could have rationally determined that denying Golden State's application for renewal of its franchise would cause or contribute to higher levels of taxicab service and increased compensation for taxicab drivers. *Golden State Transit v. City*, 686 F.2d at pp. 761-762.

agency has, acting in response to a labor dispute, attempted to regulate or prohibit some conduct by one of the parties. This case, however, is not a situation where the City was acting in response to a labor dispute. Rather, the City was acting in response to an application by Golden State for a new franchise to replace an expiring franchise. It was merely happenstance that Golden State's renewal application and the succeeding refranchising proceedings took place in the midst of a totally unrelated labor dispute.

The City, in this case, was exercising a legitimate police power, its power to regulate taxicabs on City streets. This Court has recognized that streets are primarily for the use of the public in an ordinary way and that their use for the purpose of gain (such as by a taxicab company) is special and extraordinary. *Packard v. Banton*, 264 U.S. 140, 144 (1924) (involved a New York state law requiring vehicles for hire to have liability coverage by way of bond or insurance.)

Taxicabs make a particular use of City streets in order to provide a public service. They have traditionally been subject to extensive regulation by local entities, e.g., licensing of drivers and vehicles, insurance requirements and the setting of rates. Regulation of taxicabs is a traditional municipal function. *Golden State Transit v. City of Los Angeles,* 726 F.2d 1430, 1434(4) (9th Cir. 1984).

The City Charter grants the Council a discretionary power to issue both initial and replacement (renewal) taxicab franchises. *Golden State*, 686 F.2d at 760, Pet. App. 22a. The City Council certainly had the power to act on the request for the franchise renewal. Having such power, it had the power to deny the request as well as the

power to grant. This power was in no way abated merely because Golden State was involved in a labor dispute.

This Court, in *Alessi v. Raybestos Manhattan Inc.*, 451 U.S. 504, 522 (1981) has said in reference to the doctrine of preemption that the "exercise of federal supremacy is not lightly to be presumed."

> "(P)reemption of state law by federal statute or regulation is not favored in the absence of persuasive reasons — either that the nature of the regulated subject matter permits no other conclusion, or that Congress has unmistakably so ordained." p. 522.

Golden State argues that by denying its franchise, the City stripped it of an economic weapon — the opportunity to simply outlast the strikers and thus assisted the union in the labor dispute. The Court of Appeals in vacating the preliminary injunction stated that though courts would not inquire into the alleged motives of legislators, the courts could look to the effect of legislative acts and that "one effect of the denial of Yellow Cab's franchise renewal was to alter the balance of power in the collective bargaining dispute in favor of the union." 686 F.2d at 759, Pet. App. 20a. The Court of Appeals went on to say:

> "There is ample evidence in the records to support a finding that by threatening to deny and ultimately denying renewal of Yellow Cab's franchise, the City deprived Yellow Cab of an economic weapon — the opportunity to simply outlast the strikers." 686 F.2d at 759, Pet. App. 28.

Golden State claims the City was preempted from denying it a renewal franchise because it was thereby deprived of an economic weapon. It is interesting to note, however, that if the City had granted the franchise, based on the rationale of the district court's finding, in support

of its grant of the preliminary injunction, the City would have been giving Golden State an economic weapon — the opportunity to simply outlast the strikers. Such "assistance" to Golden State, based on the arguments advanced by Golden State, would also have been preempted. Thus, Golden State's rationale would put the City in an impossible position — it could neither grant nor deny the franchise. In effect, the City's otherwise valid taxicab regulatory system would be strangulated.

Golden State cites the language from *Garner v. Teamsters Union,* 346 U.S. 485, 500 (1953) wherein the court, in commenting on a state's power to upset the balance struck by Congress in enacting the National Labor Relations Act, stated:

> "For a state to impinge on the area of labor combat designed to be free is quite as much an obstruction of federal policy as if the state were to declare picketing free for purposes or by methods which the federal act prohibits."

The City, however, was not impinging on the area of labor combat. Rather, it was "thrust into" a situation that no matter what it did it could be accused of effecting the labor dispute. In fact, if the City Council had taken no action at all and the franchise had merely terminated on March 31, 1985, the result would have been the same as what actually occurred, the *effect* would have been to "deprive" Golden State of an economic weapon in the labor dispute. Consequently, based on Golden State's argument, the City would have been preempted from not taking an action. Preemption, however, by its very definition, means precluded from acting. It is not a theory that mandates or requires action on the part of the local, or state, entity.

In effect, what Golden State is really arguing is that the City was *required* to renew its franchise, and precisely because of the labor dispute.

Adopting such a rationale would encourage a company, whose franchise was soon to expire and, who feared, for whatever reason, that a renewal franchise might not be granted, to become involved in a labor dispute. Certainly, federal labor law policy does not encourage disputes. One of the objectives of the National Labor Relations Act is to promote industrial peace. (Senate Report 573, 74th Congress, 1st Session, p. 6 (1935).)

Suppose the City were considering the award of a substantial contract for some type of emergency work and the workers of one of the bidders called a strike. The City, anxious to have the work done, might tell this bidder it cannot be awarded the contract because of the strike. Adopting Golden State's test, the City would be preempted from so doing. The "effect" test argued by Golden State would lead to such a conclusion.

The facts in this case do not constitute a labor preemption case. As stated, no matter what the City would have done, there would have been some impact on the labor dispute. The City was not preempted from denying the application for a renewal franchise because a labor dispute was pending.

C. The City Neither Interfered With The Free Play Of Economic Forces Nor Denied Golden State Self-Help.

This Court has articulated two premption doctrines. The first set cut in *San Diego Building Trades Council v. Garmon,* 359 U.S. 236, 245 (1959), states that state regulations and causes of action are presumptively preempted if they concern conduct that is actually or arguably either prohibited by Section 8 of the National Labor Relations Act (29 U.S.C. § 158) or protected by Section 7 of the Act (29 U.S.C. § 157).

The second preemption doctrine, which Golden State contends is applicable in this case, set out in *Lodge 76, International Assoc, of Machinists v. Wisconsin Employment Relations Commission,* 427 U.S. 132, 140 (1976), proscribes state regulation and state law causes of action concerning conduct that Congress intended to be unregulated, in other words conduct that was to remain a part of the self-help remedies left to the combatants in a labor dispute. *Machinists,* 427 U.S. at 147-148.

Golden State, relying on the *Machinist* doctrine, claims that the City interfered with its right to self-help by not renewing the franchise and thus attempted to restrict "a permissible economic weapon(s) in reserve" (427 U.S. at 141). Golden State asserts that the City was attempting to regulate conduct that was actually protected by federal law, and that therefore the City was preempted as a matter of substantive right. *Brown v. Hotel and Restaurant Employees and Bartenders,* ____ U.S. ____; 104 S.Ct. 3179 3187 (1984).

Golden State contends that in the exercise of its right to self-help it was seeking to resist the economic pressure generated by the Teamsters strike. It should have been able to exercise, it contends, what the district court, in granting the preliminary injunction, referred to as "the most fundamental weapon in an employer's arsenal"; "its right to rely on its economic strength, in the form of weathering a strike, when there is a bargaining impass." (Pet. Brief 24.) The National Labor Relations Board, in their *amicus* brief, p. 14, likewise argues that the ability for one to rely on its own economic power in resolving collective bargaining disputes is "part and parcel to the

system that the [NLRA] ha[s] recognized". *NLRB v. Insurance Agents International Union (Insurance Agents),* 361 U.S. 477, 489 (1960). The NLRB further argues that state and local governments have no more authority than does the Board to regulate the resort to economic weapons by parties to a labor dispute. (NLRB *Amicus* Brief, 14.)

But Golden State was not really seeking self-help. Nor did the city restrict the utilization by Golden State of an economic weapon in reserve.

Rather Golden State has a franchise which expired by its own terms March 31, 1981 and their complaint is that the City did not grant them a new franchise which would in turn have given them economic strength in dealing with the Teamsters. In order to "outlast the strikers", to use the phrase of the district court which granted the preliminary injunction, they are really claiming they needed this *assistance* from the City[10] This Court, however, in *Machinists,* 427 U.S. at 149, stated that the economic weakness of a party to a labor dispute cannot justify state aid contrary to federal law. In this case, Golden State, having a franchise which was due to expire, became involved in a labor dispute. The City had no obligation to "re-arm" Golden State by granting it the new franchise to replace the expiring one.

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[10]Certain members of the Council, during the Council hearing, expressed their realization of this fact. Councilman Yaroslavsky stated: "I resent the implication that the Council . . . is being used as a leverage against the Yellow Cab Company, by the same token, I can see why the Yellow Cab Company would want to use the Council's leverage against the Teamsters Union." (J.A. 71.) Councilman Cunningham said "(I)f we grant the extension we do give an edge to the existing operator, and to the existing franchise operations." (J.A. 66.)

This is not a situation similar to *Delaware Coach Company v. Public Service Commission,* 265 F.Supp. 648 (Del. 1967), as contended by Golden State. (Pet. Brief 21.) In *Delaware Coach,* the Delaware Public Utilities Commission was threatening to revoke the existing operating license of a bus company that was engaged in a lengthy strike. The district court ruled that the state commission was preempted from threatening to take away an economic weapon of the company. The *Delaware* case, the case of *Oil Chemical and Atomic Workers, Local 5-283 v. Arkansas Louisiana Gas Co.,* 332 F.2d 64 (10th Cir. 1964) and the other cases cited by Golden State on p. 21 of its brief, as well as *Bus Employees v. Missouri,* 374 U.S. 74 (1963) and *Bus Employees v. Wisconsin Employment Relations Board,* 340 U.S. 383 (1951) are all cases where the governmental entities were, or had, "gratuitously" exercised jurisdiction over, or otherwise "gratuitously" interjected themselves into, a labor dispute. In this case, the City, in the process of performing a legitimate regulatory role, the acting upon a request for a renewal taxicab franchise, had thrust upon it a labor dispute.

In response to the NLRB's brief the City was not prohibiting recourse to self-help by Golden State nor restricting a permissible economic weapon in reserve. Rather the City did not grant an economic weapon. There is nothing in the legislative history of the National Labor Relations Act nor in the language of *Machinists* that would indicate that merely because there was a labor dispute the City, in the exercise of a police power, was required, by the Act, to grant the franchise.

III

THE CITY'S ACTION IN THIS CASE IS NOT INCONSISTENT WITH ANY OF THIS COURT'S DECISIONS.

Golden State attempts to equate, to some extent, the City's actions to those of New York State in *New York Telephone Co. v. New York State Department of Labor,* 440 U.S. 519 (1979), by asserting that both entities took actions altering the respective bargaining power of the parties to the labor dispute. Golden State further argues that the City's actions were even more severe, insofar as the failure to renew Golden State's taxicab franchise terminated their business while New York Telephone Company only suffered a pecuniary loss.

The New York statute did alter the respective bargaining strengths of the parties to a labor dispute insofar as it provided for unemployment benefits to be paid strikers and assessed a tax against the struck employer to pay for some of these benefits, once the economic warfare between the two parties reached its ninth week. The statute was in no way neutral. The City's action, however, was neutral, to the extent that the striking employees of Golden State were deprived of their employment with Golden State (Comments of Councilman Bernardi, ftn. 3, *supra*) and Golden State did not receive a new franchise replacing its expiring one. The City's action, in this case, was not providing, unlike the *New York Telephone* case, any benefits to the employees. Nor was it imposing any obligations on the employer, Golden State. For these reasons and the other reasons stated herein the City action in this case is not inconsistent with any decision of this Court.

CONCLUSION

The Judgment of the Court of Appeals should be affirmed and, if deemed moot, remanded with a direction to dismiss.

Respectfully submitted,

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REPLY BRIEF

No. 84-1644

IN THE
Supreme Court of the United States
OCTOBER TERM, 1985

GOLDEN STATE TRANSIT CORPORATION,
Petitioner,

v.

CITY OF LOS ANGELES,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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REPLY BRIEF OF PETITIONER

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REPLY BRIEF OF PETITIONER

The controlling principles of federal labor law described in our initial brief have not been contested by Respondent or its supporting *amici*. Congress intended to allow both management and labor to resist their opponent's bargaining demands, and to support their own position in negotiations by resort to economic warfare. The collective bargaining process established by Congress is necessarily one in which private parties resolve their own disputes, free from government sanction and interference, and no one has suggested otherwise.[1] Indeed, Respondent is clearly disinclined to controvert our position on the central issue in this case; that by conditioning Golden State's franchise upon resolution of the labor dispute, the City improperly required Golden State to choose between its bargaining position and its continued existence.[2]

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[1] *See e.g.*, Brief of the AFL-CIO as *amicus curiae*, at 6-8.

[2] Instead, Respondent now contends that it did not, in fact, condition renewal of Golden State's franchise upon resolution of the

Neither has there been any serious effort to defend the Ninth Circuit's holding that a local government may abridge federal guarantees so long as the government does not (1) "directly alter the substantive outcome of the labor dispute" or (2) "dictate terms of the collective bargaining agreement." That formulation is patently inconsistent with the congressionally-established system of pri-

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labor dispute. Resp. Brief, at 9-14. This argument is captiously premised upon isolating the City Council's March 23, 1981 vote from all surrounding events. According to Respondent, all that happened in this case was that the City Council failed to find, on or before March 27, 1981, that another extension of Golden State's franchise was in the "best interest of the City." Under this view, any connection between the City's conduct and the labor dispute was purely coincidental.

The record is plain, however, repeatedly acknowledged by each of the courts below, *see infra* at 14-16, and still uncontroverted by the Respondent, that at its February 11, 1981, meeting, the City Council denied Golden State's franchise renewal request, alone out of the thirteen applicants, on the basis of nothing other than the strike. And the record is equally clear that at its February 17, 1981, meeting, the City Council again denied the franchise renewal and imposed upon Golden State a special requirement that continuation of its franchise must be held to be in the "best interest of the City" (J.A. at 110). This special requirement also was imposed in the absence of any transportation-related evidence, and no one has even suggested that these two actions were taken for reasons other than the labor dispute.

In addition to the events leading up to the March 23 meeting, which included the extraordinary step of holding the renewal request in abeyance for another six weeks (thus establishing a deadline for negotiations), there are the comments of various City Council members at the March 23 meeting, discussed in our original brief, at 5-6, that immediate settlement would result in franchise renewal —and that failure to settle would result in denial. The transcript of that meeting is replete with inquiries about the labor dispute, including whether the parties to negotiations had been fully informed of the City Council's position (J.A. 67-68) and whether the City Council could reverse its franchise denial in the event of a late settlement. (*Id.*; J.A. at 74-75, 82-83). In light of this record, it is impossible to believe that the City Council's refusal to extend or renew the franchise represented anything other than execution upon the City's prior threats.

vate dispute resolution, *see* Pet. Brief, at 11 *et seq.*, and neither the Respondent nor the *amici* claim that the court below could properly approve a grant of summary judgment against Golden State on the basis of this erroneous legal theory.

This case involves local government action that undermines the cornerstones of the structure of labor-management relations established by Congress. It presents no occasion for the formulation of any new preemption test—even were it clear that the Court should or could establish any broadly applicable formulae in this field.[3] Rather, this case can, and should, be resolved on the basis of the Court's existing preemption decisions, which establish that an actual conflict between federal and local law must be resolved in favor of the federal scheme, at least absent evidence that Congress affirmatively approved of the local activity in question.

ARGUMENT

I. THIS CASE IS NOT MOOT.

This case presents a live and continuing controversy in which Golden State's injuries can be redressed by a favorable judicial decision. *Iron Arrow Society v. Heckler*, 464 U.S. 67, 70 (1983). Golden State operated the largest taxicab company in Los Angeles until its franchise was denied in 1981. It remains unable to operate for lack of a franchise, and thus continues to suffer the City's denial of its franchise renewal request. By concentrating solely on the expiration date of the franchise recom-

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[3] As *amicus* AFL-CIO points out, the extreme facts of this case allow its proper resolution without resort to novel theory. The Court has traditionally resolved labor preemption issues on a case-by-case basis, translating the "statutory implications" of the labor laws "into concreteness by the process of litigating elucidation." *International Association of Machinists v. Gonzales*, 356 U.S. 617, 619 (1958). There is no reason to abandon that approach in this case.

mended to the City Council in 1981, Respondent seeks to divert the Court's attention from the real and continuing harm suffered by Golden State. The passage of five years has in no sense "irrevocably eradicated the effects of the alleged violation," *City of Los Angeles v. Lyons*, 461 U.S. 95, 101 (1983) quoting *County of Los Angeles v. Davis*, 440 U.S. 625, 631 (1979), nor has the City shown how this passage of time would present any barrier whatever to a grant of appropriate relief that would compensate Golden State for its injuries and restore its franchise, allowing it to resume operation.[4] There is absolutely no basis for the City's mootness claim in these circumstances.

II. THIS CASE INVOLVES A DIRECT CONFLICT BETWEEN LOCAL INTERVENTION IN A LABOR DISPUTE AND FREE COLLECTIVE BARGAINING GUARANTEED BY FEDERAL LABOR LAW.

1. Since *Gibbons v. Ogden*, 9 Wheat. 1 (1824), it has been clear that local government actions that conflict with federal law or disrupt the proper operation of a federal scheme must yield, no matter what "neutral," "legitimate" or "benign" justifications arguably support the local government conduct. Determining whether state or local action "stands as an obstacle to the accomplish-

[4] Respondent's argument that Golden State waived any damage claims is plainly wrong and does not even approach the heavy burden normally required of a litigant claiming mootness. *See United States v. W.T. Grant Co.*, 345 U.S. 629, 633 (1953). Golden State's damage claim was based in part upon denial of its "constitutional and statutory rights" (J.A. at 16; Second Amended Complaint at 26), which specifically included "[i]ts right to engage in collective bargaining without local political interference" and "[i]ts right to employ lawful economic weapons in its labor dispute." *Id.* While we did not seek *certiorari* on the due process and equal protection counts of the complaint, the parties and the courts below have at all times treated the Supremacy Clause claim independently of the Fourteenth amendment claims. The City's attempt to conflate these separate claims has no basis in the record.

ment of the full purposes and objectives of Congress" requires nothing more analytically complex than first, a clear understanding of the manner in which the federal scheme is meant to operate, based upon a thorough analysis of the federal policies involved, and second, a realistic appraisal of the impact of the state or local conduct upon the federal scheme.[5]

To be sure, if state or local law does not disrupt the proper operation of the federal scheme—if it presents no "substantive conflict with a federal enactment," *Brown v. Hotel & Restaurant Employees*, 104 S. Ct. at 3187—then there is no preemption. But in ascertaining the existence of a substantive conflict, the precise method by which the state acts—whether a state commission directly prohibits the conduct (*Lodge 76, Machinists v. Wisconsin Employment Relations Commission*, 427 U.S. 132 (1976)), state law imposes a damage remedy for engaging in the conduct (*Local 20, Teamsters v. Morton*, 377 U.S. 252 (1964)), a state body denies unemployment benefits on the basis of the conduct (*Nash v. Florida Industrial Commission*, 389 U.S. 235 (1967)), or a state seizes the employer's facility in order to end a strike (*Bus Employees v. Missouri*, 374 U.S. 74 (1963)) —is not determinative. "[J]udicial concern has necessarily focused on the nature of the activities which the States have sought to regulate, rather than on the method of regulation adopted." *San Diego Building Trades Council v. Garmon*, 359 U.S. 236, 243 (1959); *and see id.*, at 246-47.

[5] If an apparent conflict is found, the Court must then ascertain whether Congress intended to tolerate the conflict in question. Proof of congressional tolerance must arise from federal legislative history, as illustrated in *New York Telephone Co. v. New York State Department of Labor*, 440 U.S. 519 (1979) and *Brown v. Hotel & Restaurant Employees*, —— U.S. ——, 104 S. Ct. 3179 (1984). Such evidence can be gleaned from the labor laws themselves, as in *Brown*, or from other federal statutes, as in *New York Telephone*.

Respondent and its *amici* seek to avoid conventional preemption analysis by advocating a test that ultimately focuses upon legislative motive rather than upon the impact of the challenged action on federally-guaranteed freedoms. But their claim that benign motivation, actual or presumed, can cure an otherwise fatal conflict between local action and federal law has been rejected by this Court as inconsistent with basic Supremacy Clause principles. In *Perez v. Campbell*, 402 U.S. 637 (1971), the Court found two earlier preemption decisions "aberrational" precisely because they allowed justification of an actual federal-state conflict by reference to local legislative motive.[6]

> We can no longer adhere to the aberrational doctrine of *Kesler* and *Reitz* that state law may frustrate the operation of federal law as long as the state legislature in passing its law had some purpose in mind other than one of frustration. Apart from the fact that it is at odds with the approach taken in nearly all our Supremacy Clause cases, such a doctrine would enable state legislatures to nullify nearly all unwanted federal legislation by simply publishing a legislative committee report articulating some state interest or policy—other than frustration of the federal objective—that would be tangentially furthered by the proposed state law. . . . Thus, we conclude that *Kesler* and *Reitz* can have no authoritative effect to the extent they are inconsistent with the controlling principle that any state legislation which frustrates the full effectiveness of federal law is rendered invalid by the Supremacy Clause.

402 U.S. at 651-52; *accord, Pacific Gas & Electric Co. v. Energy Resources Commission*, 461 U.S. 191, 216, n.28 (1983). And the Court's decisions in *Brown, Allis-Chalmers v. Lueck*, —— U.S. ——, 105 S. Ct. 1904

[6] *Kesler v. Department of Public Safety*, 369 U.S. 153 (1962) and *Reitz v. Mealey*, 314 U.S. 33 (1941).

(1985), and *Metropolitan Life Insurance Co. v. Massachusetts*, —— U.S. ——, 105 S. Ct. 2380 (1985), establish that this principle is fully applicable in the labor field. *See* Pet. Brief at 25-28. Benign motivation, whether real or feigned, *Perez v. Campbell, supra*, cannot cure a conflict between federal and state law.[7]

2. Citing generally to *New York Telephone Co., amicus curiae* National League of Cities, *et al.* argues that laws of "general applicability" are not amenable to normal preemption analysis, and that preemption is appropriate with respect to such laws only upon a showing of improper legislative motive. Even if this case involved a law of general applicability, which it plainly does not,[8] this argument is based upon a flat misreading of *New York Telephone*.[9] In that case, the finding that provided the

[7] For this very reason, the balancing test suggested by the United States—under which a state or local government could justify a law with an "incidental" impact upon labor relations by proving a "sufficiently close and urgent relationship between the burden imposed and the achievement of a legitimate interest," Brief of the United States as *amicus curiae*, at 13—is improper. Indeed, this suggestion is facially inconsistent with the controlling principles recognized and articulated elsewhere in the Solicitor General's brief. *See, e.g.*, United States *amicus* brief, at 12-13.

[8] At a minimum, a law of "general applicability" must involve a law or policy that predates or extends beyond the dispute in question. In this case, the requirements imposed upon Golden State were purely *ad hoc*, created by the City Council for this single occasion and never embodied in rules, orders or policies applicable to other employers.

[9] The Court has never held that a different preemption analysis is applicable in cases involving laws of "general applicability," and in *New York Telephone* itself a majority appeared to reject that proposition. *See* Cox, *Recent Developments in Federal Labor Law Preemption*, 41 Ohio St. L.J. 277, 282, 293-94 (1980). To the extent that there might be a basis for a different preemption analysis in such cases, it would arise because employers or unions would be requesting an exemption from otherwise applicable state or local law. For example, in *Belknap v. Hale*, the employer asked to be excluded from the operation of ordinary state contract law because

foundation for the Court's judgment was the conclusion that Congress, in enacting the Social Security Act, had implicitly agreed to tolerate the type of local action being challenged. It is clear that but for this conclusion, gleaned from federal legislative history, a majority of the Court in *New York Telephone* would have found the New York scheme in impermissible conflict with federal labor policy. *See Metropolitan Life Insurance*, 105 S. Ct. at 2395 (1985); and *see* Pet. Brief, at 40-41.

Contrary to *amicus*' suggestion,[10] *none* of the opinions in *New York Telephone* focused on the local purposes of the challenged statute, beyond noting that the payments in question were part of a broader public welfare benefit program. The concurring and dissenting justices focused

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it was engaged in a labor dispute. And in *Metropolitan Life Insurance*, the employer and union also requested exemption from an otherwise applicable public law dealing with minimum mental health benefits.

In such cases, the question posed is whether Congress has by implication exempted employers and unions engaged in collective bargaining from otherwise applicable state or local laws. That is a much different question than the one before the Court. Golden State has made no request for an exemption from otherwise applicable state law. We have not contended that the labor dispute entitles us to be treated differently from similarly situated competitors, nor have we ever contended that the existence of a labor dispute *requires* a licensing body to grant a license or franchise it otherwise would not have occasion to grant. We seek no special privilege because of the strike, but rather wish to be treated exactly like our similarly situated competitors, each of whom had its franchise renewed upon recommendation of those same City bodies who also without qualification recommended renewal of Golden State's franchise.

[10] *Amicus* National League of Cities, *et al.*, argues that *New York Telephone* turned on the existence of a "neutral purpose" underlying the state benefit scheme, *amicus* brief at 13-14, n.7, and on this basis builds the argument that the determinative inquiry in such a case should be whether the local government's "purpose was to interfere with the labor dispute." *Amicus* brief, at 24.

squarely on the *effect* of the State's program on the balance of bargaining power established by Congress. *See* 440 U.S. at 547, 548-50 (Blackmun, J. concurring with Justice Marshall); 440 U.S. at 551, 558-59 (Powell, J. dissenting, joined by The Chief Justice and Justice Stewart); *and see* 440 U.S. at 546 * (Brennan, J. concurring). And the plurality intimated that the basic inquiry is not purpose but "impact," 440 U.S. at 544, and the extent to which the "general state policy *affects* the relative strength of the antagonists," 440 U.S. at 546, although it concluded that effect was not determinative in light of the legislative history of the Social Security Act. *Id.*

The determinative significance of effect rather than motive is illustrated most clearly in the dissent of Justice Powell, who did not find any affirmative evidence of congressional intent to approve the program in question and thus focused squarely on the existence of a "substantive conflict." Justice Powell expressly rejected the purpose inquiry suggested by *amicus*, noting that "preemption must turn *not on the generality of purposes or applicability of a state law* but on the *effect* of that law when applied in the context of labor-management relations," 440 U.S. at 558 (emphasis added). Justice Powell concluded that the New York statute was impermissible because of its effect upon the balance of bargaining power established by Congress. "It is self-evident that the 'potential [of the New York law] for interference' with the federally protected economic balance between management and labor is direct and substantial." 440 U.S. at 558-59.

Neither in *New York Telephone* nor in any of the other cases relied upon by *amicus* was motive found determinative;[11] in each case the Court concentrated upon the *ef-*

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[11] The same realistic inquiry into the effect of the state law was highlighted in *Brown v. Hotel & Restaurant Employees*, where the Court remanded for factual findings on the question "whether [the local action being challenged] will so incapacitate Local 54 as to prevent it from performing its functions as the employees'

fect on the federal scheme. Where state or local government action has a direct and substantial effect upon the operation of the federal scheme as envisioned by Congress —either by undermining the scheme's structural foundations or by significantly altering the balance of bargaining power in favor of management or labor—the Court has made it plain that even a generalized state policy must yield to the federal interest in the balanced functioning of the free collective bargaining system.[12] Under whatever authority the State acts, "the States have no more authority than the Board to upset the balance that Congress has struck between labor and management in the collective bargaining relationship." *Metropolitan Life Insurance*, 105 S. Ct. at 2395.

Under any test that focuses on the effect of a local government action upon the balance of bargaining power in a labor dispute, the City's action was preempted. By conditioning Golden State's right to do business upon resolution of the labor dispute, the City Council granted the Teamsters a governmentally-enforceable veto over Golden State's very existence. Only by obtaining an agreement with the Teamsters, and obtaining that agreement by a specified date, could Golden State remain in business. The City Council transformed bargaining from a contest between relative equals, each trying the economic strength of the other, into a situation in which the Teamsters were given the right to dictate the terms of Golden State's surrender. That is not free and unfettered bargaining as

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chosen collective-bargaining agent," 104 S. Ct. at 3191; *id.*, at 3192-93 (White, J., dissenting, joined by Justice Powell and Justice Stevens, finding the impact of the state law self-evident). And in *Belknap v. Hale*, 463 U.S. 491, 512, the majority found no basis for the assertion that enforcement of a neutral garden-variety contract action between the employer and a third party would "conflict with the rights of either the strikers or the employer or would frustrate any policy of the federal labor laws."

[12] At least absent some affirmative indication that Congress was willing to tolerate the resulting interference.

envisioned by Congress. Indeed, it is not bargaining at all.

III. THE CITY WAS NOT REQUIRED TO ACT IN A FASHION THAT INFRINGED UPON COLLECTIVE BARGAINING RIGHTS.

1. Respondent and several *amici* claim that the City was unwillingly "thrust into" a situation in which any action that it took would have tipped the balance in the labor dispute one way or the other. Whatever conceptual strength this distinction may have elsewhere, it has no application to this case. When the Teamsters approached the City and requested that the franchise renewal be denied because Golden State was bargaining in bad faith, the response should have been no different than if the Teamsters had asked the City to impose a fine or criminal penalties on Golden State for resisting their demands.

The City could and should have ignored the Teamsters and acted without regard to the labor dispute. Had the City renewed Golden State's franchise, it would not have been enhancing Golden State's bargaining power. Golden State would not have gained anything *because of* the strike, or because it continued to resist the Teamsters' demands. Golden State's ability to withstand the economic injury imposed by the strike would not have been augmented, and the parties would have remained free to settle their dispute using those economic weapons Congress made available to them. The labor-management balance of bargaining power and the system of private dispute resolution established by Congress would have been maintained.

The City and its *amici* seem to confuse maintaining neutrality in the labor dispute with maintaining neutrality between the views of the parties. In this case, the Teamsters requested that the City use its franchising power to augment the union's economic weapons. Golden

State, by contrast, urged the City to stay out of the dispute, and to renew the franchise as recommended by all subordinate City bodies. To be sure, the City had to choose between the position of the Teamsters and that of Golden State. Only one of those positions, however, allowed for neutrality in the labor dispute.

2. We do not contend, as suggested by Respondent, that local governments must cease to function during a labor dispute, or that Congress in passing the labor laws intended to interdict all government action that might in any way infringe upon the economic strength of either management or labor.[13] As noted last term in *Metropolitan Life Insurance*, in the Wagner Act Congress intended to create "an equitable process for determining terms and conditions of employment," 105 S. Ct. at 2396 by "restoring equality of *bargaining power*." Id., at 2397 (emphasis added). It established this relative equality of bargaining power by creating a code of conduct for

[13] There may well be some difference in preemption cases where the state is not acting as a sovereign regulator. The plurality opinion in *New York Telephone* suggested that the Court might be attentive to the nuances of the state scheme being challenged, 440 U.S. at 533-34, 545, and we agree in principle that when the state acts as benefactor, grantor, or market participant, the incompatibility between state or local law and free collective bargaining may be more difficult to establish.

These concerns are not applicable here, for the City's actions in this case were classically regulatory. A franchising or licensing process that involves the power to forbid someone from engaging in a trade or business necessarily requires a local government to exercise a uniquely sovereign function, not remotely capable of being exercised by a mere market participant. And for much the same reason, this case differs from one that might arise from a state's decision not to subsidize certain activities. *See, e.g., Regan v. Taxation Without Representation of Washington*, 461 U.S. 540, 549-50 (1983); *Maher v. Roe*, 432 U.S. 464, 473-74 (1977). By denying a corporation the right to engage in a lawful trade or business, no less than when a local or state government prosecutes an individual criminally, the State is exercising its police powers in a purely regulatory capacity.

management and labor, endowing each party with certain rights and certain economic weapons, in order to allow them to resolve their own disputes without government interference.

It is the effect of local government action upon this congressionally-created balance of bargaining power, and upon the structure of labor-management relations based thereon, that is determinative in a *Machinists* preemption case. A wide variety of local government actions—ranging from changes in the tax laws to criminal prosecutions—must be undertaken during negotiations, and these actions may make one party or the other stronger and thus affect the outcome of those negotiations. But Congress was not ultimately concerned "with particular substantive terms of the bargain that is struck," *Metropolitan Life Insurance*, 105 S.Ct. at 2396, but rather with establishing a relatively balanced bargaining process based upon an equitable distribution of economic weapons. That process is not distorted by government decisions made without reference to, but during the course of a labor dispute, because such decisions do not make one party stronger or weaker depending upon its stance in negotiations or the manner in which it chooses to conduct economic warfare. Such local actions do not add to or subtract from the rights or responsibilities established under the labor laws, and thus do not upset the labor-management balance struck by Congress.

But that is not this case, for here the labor nexus of the City's conduct is clear. The City conditioned Golden State's franchise upon surrender of its stance in bargaining, thus burdening the exercise of freedoms granted by Congress under the labor laws. By ignoring Golden State's request that it remain neutral and insisting upon resolution of the dispute before Golden State's franchise could be renewed, the City used its franchising authority to disrupt and distort the system of free collective bargaining established by Congress.

IV. RESPONDENT'S EFFORTS TO RAISE FACTUAL ARGUMENTS IN THIS COURT ARE INAPPROPRIATE.

1. Summary judgment was granted against Golden State on the basis of a seriously flawed legal theory. Neither that theory, nor any alternative justification for the result below proffered by Respondent or its *amici*, is consistent with the congressional judgment that labor disputes are to be resolved by private parties free from government sanction. Application of the proper legal theory requires judgment for Golden State.

Respondent's attempt to raise factual arguments, and its request that this Court make its own independent findings of fact,[14] is nothing less than an invitation to ignore all of the decisions below. Each of those decisions is premised upon the elemental fact that the City conditioned Golden State's franchise upon resolution of the labor dispute. That premise is fully supported by the record.

In granting a preliminary injunction shortly after the events at issue occurred, Judge Hauk had no question that the City had conditioned Golden State's franchise upon resolution of the labor dispute:

> *By threatening to allow Yellow Cab's franchise to terminate unless it entered into a collective bargaining agreement with the Teamsters*, the City Council effectively denied Yellow Cab of its most basic weapon the economic strength of an on-going franchise.

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[14] While the facts in this case strongly support our position and we have no substantive objection to any factual review of the record, we recognize that this is a court of law exercising an appellate jurisdiction, and that the Court engages in fact-finding only in the most extraordinary circumstances. *See Graver Manufacturing Co. v. Linde Co.*, 336 U.S. 271, 275 (1948); *and see generally* Stern & Gressman, *Supreme Court Practice*, at 290-91. Such circumstances are plainly not present here, for the reasons explored in the text.

520 F. Supp. at 194, Pet. App. at 32a (emphasis added).[15] Indeed, in its first opinion, the Ninth Circuit also had no doubt that the City had used denial of the franchise as a threat.

> The district court did determine that one *effect* of the denial of Yellow Cab's franchise renewal was to alter the balance of power in the collective bargaining dispute in favor of the union. *See* 520 F.Supp. at 194. That determination is not clearly erroneous. *See* Fed.R.Civ. P. 52(a). There is ample evidence in the record to support a finding *that by threatening to deny and ultimately denying renewal* of Yellow Cab's franchise, the city deprived Yellow Cab of an economic weapon—the opportunity simply to outlast the strikers.

686 F.2d at 759, Pet. App. 20a.[16]

There is also no ground for dispute that the Ninth Circuit, in its second opinion, plainly held that the City had conditioned the franchise upon resolution of the labor dispute—although it mistakenly held this action lawful.

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[15] The notion that there might be reasons for the City's conduct other than the strike is of relatively recent vintage. At the preliminary injunction hearing, it was conceded that the franchise was denied because of the strike, and Judge Hauk so held. 520 F. Supp. at 193, Pet. App. at 29a ("It is undisputed that the sole basis for refusing to extend plaintiff's franchise was its labor dispute with its Teamster drivers."); 520 F. Supp. 193-94, Pet. App. at 30a ("It is undisputed that defendant City Council's refusal to renew plaintiff's taxicab franchise was based solely on the grounds that plaintiff's union drivers were on strike.").

[16] While this finding was not mentioned in the second district court opinion, the first Ninth Circuit panel held that only if Golden State could prove that Congress intended to preempt local franchising power would it be entitled to prevail. 686 F.2d at 760, Pet. App. 21a. While this decision was wrong, as the Ninth Circuit itself later admitted, it ensured that the lower court would focus only upon legislative history. There was no new factual evidence introduced on remand, and Judge Hall did not make any independent findings of fact, merely adopting the City's proposed findings without change. Pet. App. at 12a.

> Nothing in the record indicates that the City's refusal to renew or extend Golden State's franchise *until an agreement was reached and operations resumed* was not concerned with transportation.
>
> . . . .
>
> The City did not attempt to dictate terms of the collective bargaining agreement or alter the substantive outcome of the dispute. *It merely insisted upon resolution of the dispute as a condition to franchise renewal.*

754 F.2d at 833, Pet. App. at 7a, 8a (emphasis added). While Respondent and its *amici* repeat again and again the Ninth Circuit's language that nothing indicates that the City's action "was not concerned with transportation," they have carefully edited out that portion of the court's own language not suited to their cause. It was the City's refusal "to renew or extend Golden State's franchise *until an agreement was reached* and operations resumed" that, according to the court below, presumptively was motivated by an interest in transportation. But as explained above, no local interest in transportation could cure the City's decision to condition the franchise upon resolution of the labor dispute.

All of these decisions clearly addressed the legality of the City's determination not to grant Golden State's franchise renewal unless and until the labor dispute was resolved.[17] This question is squarely presented to the Court. Respondent's factual arguments are inappropriate and should be rejected.[18]

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[17] Indeed, Respondent has previously admitted that this is precisely the issue decided by the Ninth Circuit. In its Opposition to Certiorari, the Respondent stated:

> The Court of Appeals decision concluded it was within the City's powers to insist upon resolution of the dispute as a condition to a franchise renewal.

Op. Cert. at 14.

[18] In the courts below, *and see* Resp. brief at 12-14, the City argued that our claim necessarily entails an impermissible inquiry into legislative motive. That is both untrue and highly ironic, given our position that effect rather than motive is determinative in preemption cases, and the City's contrary view. Understanding the nature of the City's action—conditioning the franchise upon resolution of the labor dispute—is far different than an inquiry into the motive for that action. Whether the City Council members were motivated by a sincere desire to improve transportation in the City, were (mistakenly) trying to remain neutral or were merely attempting to curry favor with a powerful union constituency, the means chose to achieve their ends—refusing to renew Golden State's franchise unless and until the labor dispute was resolved—are in plain and apparent conflict with the federal labor laws.

2. Even were a factual argument proper before this Court, the undisputed facts in the record leave no doubt that Golden State's franchise renewal was conditioned upon resolution of the labor dispute, and are flatly inconsistent with the alternative theories proffered by Respondent and its *amici.*

a. Golden State's timely application for a franchise renewal was considered, along with the applications of its twelve competitors, by three different City agencies. No agency raised any issue with respect to having too many cabs on the street, and the final agency recommendation to the City Council (J.A. 36-43) recommended approval of all thirteen franchises.

b. On February 11, 1981, the Teamsters struck and Golden State, alone of all thirteen applicants, had its franchise renewal refused after the Teamsters specifically so requested. No evidence of an excess number of cabs, nor any transportation-related evidence supporting the denial of the franchise, was available at that time.

c. On February 17, 1981, again at the behest of the Teamsters, the City Council again denied Golden State's franchise renewal. No evidence of "excess cabs" existed and no reason for this action, other than the strike, was brought forward by anyone. The City Council at this meeting also imposed a special condition on Golden State, again applicable solely to this one employer, that its franchise

would be extended only until April 30, 1981, and then only to the extent the City Council found on or before March 27, 1981 that the 30-day extension was in the "best interest of the City."

d. The strike caused no disruption in taxi service, insofar as existing operators' "service level has increased substantially." (J.A. 70).[19]

Each of these undisputed facts shows that prior to the March 23 meeting, the City Council had refused Golden State's renewal request in the absence of *any* transportation-related evidence. At the March 23 City Council meeting, there was admittedly some anecdotal evidence—consisting of a statement by one of Golden State's competitors relating unsubstantiated reports from unidentified hotel doormen (J.A. 63) and the unsubstantiated opinion of one City official (J.A. at 69-70)—that Golden State's absence had not *injured* the industry. But the claim that the City Council found there were too many cabs on the street, and that the franchise was denied for this reason, founders on the statements of Ms. Russell, the Chair of the City Council's Transportation and Traffic Committee. She stated at the conclusion of the meeting that if Golden State's franchise was not renewed the City would have to study the entire issue to determine whether it would be appropriate to negotiate a reduction in service with Golden State's successor. (J.A. 85). Indeed, the very notion of a successor to Golden State—assumed as well by the Teamsters (J.A. at 62)—negates

[19] The record does not reveal to what extent existing companies put additional cabs on the street in order to take up the slack left by the Golden State strike, or whether any such arrangements were of a permanent or a temporary nature. There is no record support for the claim that Golden State operated no taxis during the work stoppage, *National League of Cities, et al.*, at 3. While the issue is not relevant and the actual fact is outside the record, we would be able to prove that Golden State continued to operate between 10-20% of its fleet during the strike.

any claim that the franchise was denied because there were already enough cabs on the street.

Even this truncated review of the facts illustrates that Respondent's view of the record is untenable. While not every City Council member spoke on March 23, those that did—including the President of the Council (J.A. 75), the Chair of the Council's Transportation Committee (*supra*), and various other members (J.A. 67, 69; 71-72)—all made statements flatly inconsistent with Respondent's transportation hypothesis. The explicit statements of the Council members and the careful and repeated questioning of the City attorney as to the impact of a negative vote, the amount of time necessary to reverse such a vote in the event of a prompt settlement (J.A. 67-68, 74-75, 82-83), and whether the City Council's attitude had been communicated to the parties (J.A. 68), belie any assertion that the action of the City was something other than an attempt to condition Golden State's continued existence upon resolution of its labor dispute with the Teamsters.

CONCLUSION

The congressionally-established system of private industrial dispute resolution, based upon free collective bargaining, cannot coexist with the type of local government action in question here. The judgment of the Court of Appeals should be reversed.

Respectfully submitted,

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AMICUS CURIAE

BRIEF

No. 84-1644

IN THE
Supreme Court of the United States
OCTOBER TERM, 1985

GOLDEN STATE TRANSIT CORPORATION,
Petitioner,

v.

CITY OF LOS ANGELES,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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BRIEF *AMICUS CURIAE* OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA IN SUPPORT OF THE PETITIONER

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BRIEF *AMICUS CURIAE* OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA IN SUPPORT OF THE PETITIONER

INTEREST OF THE *AMICUS CURIAE* [1]

The Chamber of Commerce of the United States of America ("the Chamber") is a federation consisting of approximately 180,000 companies and several thousand

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[1] This brief is filed with the written consent of all parties as provided in Rule 36.2 of the Rules of the Supreme Court of the United States. Copies of those consents are on file with the Clerk of the Court.

other organizations such as state and local chambers of commerce and trade and professional associations. It is the largest association of business and professional organizations in the United States. A significant aspect of the Chamber's activities is the representation of the interests of its member-employers in employment and labor relations matters before the courts, the United States Congress, the Executive Branch and independent regulatory agencies of the federal government. Accordingly, the Chamber has sought to advance those interests by filing *amicus curiae* briefs in a wide spectrum of labor relations litigation before this Court.[2]

The instant case presents the issue of whether a municipal government may intervene directly in a labor dispute by conditioning an employer's right to do business in the municipality on that employer's settlement of a labor dispute with the union representing its employees. Specifically, this Court must decide whether the City of Los Angeles may condition the renewal of a taxicab franchise on the resolution of the franchisee's labor dispute, or whether the National Labor Relations Act and federal labor policy preempt such governmental intrusion into the collective bargaining process.

These issues are of vital concern to the Chamber and its members, many of whom have collective bargaining relationships with unions and virtually all of whom are subject to state and local regulation of one form or another. If a state or municipality may condition the very existence of a business on the resolution of a labor dis-

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[2] E.g., *Allis-Chalmers Corp. v. Lueck*, —— U.S. ——, 85 L. Ed. 2d 206 (1985); *Trans World Airlines v. Thurston*, —— U.S. ——, 83 L. Ed. 2d 523 (1985); *New York Telephone Co. v. New York State Department of Labor*, 440 U.S. 519 (1979); *Buffalo Forge Co. v. United Steelworkers of America*, 428 U.S. 397 (1976); *Connell Construction Co. v. Plumbers and Steamfitters Local Union No. 100*, 421 U.S. 616 (1975); *Gateway Coal Co. v. United Mine Workers of America*, 414 U.S. 368 (1974); *NLRB v. Bell Aerospace Co., Div. of Textron, Inc.*, 416 U.S. 267 (1974).

pute, then it follows that there are hundreds of other, less drastic ways governmental entities may similarly step into the collective bargaining process. This, of course, raises the possibility that the resolution of labor disputes will come to turn on the exercise of political power rather than economic power.

There may well be occasions when Chamber members could compete more effectively in the political arena than in the economic arena. However, the Chamber believes that its members' ultimate interests would be ill-served by a disruption of the nation's fifty-year-old collective bargaining system wherein the resolution of labor-management disputes is dependent on the interplay of the parties' legitimate economic weapons. The actions of the City of Los Angeles disrupted—indeed, eviscerated—this interplay and, accordingly, the Chamber submits this brief urging the Court to rule that the City's actions were preempted by federal law.

SUMMARY OF THE CASE

The events giving rise to the instant case occurred in 1981 when the Los Angeles City Council refused to renew the taxicab franchise of Golden State Transit Corporation unless the Company agreed to a new labor contract with a local Teamsters Union representing Golden State's cab drivers. The facts surrounding the City's actions are simple and straightforward.

Prior to 1981 Golden State was one of thirteen taxicab companies operating in the City of Los Angeles ("the City") under franchises that were due to expire in October 1980. Although all of the companies applied for franchise renewals in a timely fashion, the City temporarily extended the old franchises on several occasions (ultimately extending them all through March 31, 1981) in order to allow various municipal departments, boards and committees to study the City's overall taxi-

cab situation and make recommendations on the various companies' applications for renewal. That process had been completed by February 1981, with all reviewing bodies finding that Golden State and five other companies were in full compliance with the City's conditions for renewal and recommending that the City Council issue new, five-year franchises to those companies (Pet. App. 27a-28a; J.A. 22-43). The remaining seven taxicab companies were found to be deficient in some respect, and it was therefore recommended that they receive only probationary, one-year franchise renewals (J.A. 22-43). These recommendations were docketed for City Council action on February 11, 1981.

In the meantime, while this review process was ongoing, Golden State was attempting to negotiate a new collective bargaining agreement with the Teamsters to replace the prior agreement which had been due to expire in October 1980 (Pet. App. 27a). By mutual agreement, the expired labor contract had been extended until February 11, 1981, the date the City Council was to act on the cab companies' applications for franchise renewals.

Golden State and the Teamsters failed to reach agreement by February 11, and the Teamsters struck on that date. They also appeared that day at the City Council to argue against the renewal of Golden State's franchise based on the Company's position in collective bargaining negotiations. After reviewing the negotiations for Council members, Teamster representatives urged that Golden State's franchise not be renewed until the labor dispute was resolved (Pet. App. 28a). After hearing these arguments on February 11, the Council adopted the recommendations of the various reviewing bodies and issued new franchises to all franchisees except Golden State for the recommended one-year or five-year periods. However, based upon the Teamsters' testimony, the City Council deferred action on Golden State's application until February 17.

The City Council met again on February 17 and, again at the urging of Teamster representatives, refused to grant Golden State the five-year renewal recommended by the various boards, departments and committees that had reviewed the cab companies' applications. Instead, the Council granted Golden State only a 30-day franchise extension until April 30, 1981, contingent on the Council's finding, before March 27, that the 30-day extension was in the "best interests" of the City (Pet. App. 28a).

During this hiatus period, Golden State and the Teamsters continued to bargain, with the Teamsters using the threat of franchise nonrenewal to force acceptance of its bargaining demands. Specifically, Teamster representatives threatened that "[w]e are going to see that the City revokes or does not renew your franchise if you do not meet our demands" (J.A. 52).

That, in fact, came to pass on March 23, 1981, when the City Council met to determine whether Golden State's temporary, 30-day franchise extension should be approved—an approval that was necessary to keep Golden State's franchise from lapsing completely. Teamster and AFL-CIO representatives made presentations at that meeting, contending again that Golden State had not bargained in good faith and was refusing to pay its employees a "decent wage" (J.A. 60-62, 63-64).[3] They urged that the Golden State franchise not be extended or renewed and expressed the hope that the Teamster drivers employed by Golden State would be able to get better jobs with Golden State's successor (J.A. 60-62). City Council members thereafter voted not to extend Golden State's franchise, but they indicated that there would still be time before March 27 to extend the franchise if the labor dispute were settled by the end of the

[3] The Teamsters, however, never filed any bad faith bargaining charges with the NLRB, the agency that is empowered by law to decide an employers' "good faith" at the bargaining table. 29 U.S.C. § 158(a)(5).

week (Pet. App. 29a; J.A. 65-69, 75). Moreover, Council President Ferraro made clear that if the dispute were not settled in that time period "there is a very good possibility that there will not be a franchise for [Golden State], [the franchise] will lapse . . . [and] it will be open to other companies" (J.A. 75).

Golden State promptly sought an injunction in the district court to restrain the City from denying its license on the ground, *inter alia*, that the City's action was unconstitutional because it was preempted by the National Labor Relations Act. The district court's grant of a preliminary injunction (Pet. App. 26a-32a) was reversed by the court of appeals (Pet. App. 18a-25a). Following an unpublished remand decision by the district court, the Ninth Circuit denied Golden State's injunction request in the decision now before this Court (Pet. App. 1a-10a).

In sum, the City of Los Angeles denied Golden State a renewal of its taxicab license because the Company had not resolved its bargaining dispute with the Teamsters. In granting Golden State's request for a preliminary injunction, the district court found that "[i]t is undisputed that the sole basis for refusing to extend [Golden State's] franchise was its labor dispute with its Teamster drivers" (Pet. App. 29a). The Ninth Circuit did not disturb this conclusion of the district court. On the contrary, it described the City's action in precisely the same manner, finding that the City had "merely insisted upon resolution of the dispute as a condition to franchise renewal" (Pet. App. 8a).

Despite these findings that the City's actions were based on the existence of Golden State's labor dispute, and notwithstanding the absence of any evidence that the dispute disrupted cab service (J.A. 69-70), the court of appeals held that the City's actions were not preempted by federal labor law for two reasons. First, the court found that the City's actions were "concerned with

transportation," which the court said was a "peripheral concern" of the National Labor Relations Act and thus not preempted under this Court's decisions (Pet. App. 6a-7a). Second, the appellate court found that the City's actions were not preempted because, according to the court, the City "did not attempt to dictate terms of the collective bargaining agreement or alter the substantive outcome of the dispute . . . [, but] merely insisted upon resolution of the dispute as a condition to franchise renewal" (Pet. App. 8a). As we show below, these conclusions are based on a fundamental misapprehension of this Court's decisions and they strike directly at the heart of the nation's federal scheme of labor-management relations.

SUMMARY OF ARGUMENT

In enacting the National Labor Relations Act 50 years ago, Congress made a fundamental choice about the direction that labor-management relations would take in this country. As this Court has repeatedly emphasized, Congress chose to establish a system which granted employees the right to organize and bargain collectively, but which left the results of that bargaining to be determined by the relative economic strength of the parties. Consistent with this fundamental premise of the federal Act, this Court long ago held that neither the NLRB nor state and local governments may deprive employers and employees of legitimate economic weapons left unregulated by the Act. According to the Court, Congress specifically intended that the parties' economic weapons would be an integral part of the collective bargaining process, and to permit governmental regulation of those weapons would strike at the very heart of the free collective bargaining system established by the Act.

If the judgment of the Ninth Circuit is not reversed, this linchpin of national labor policy will be seriously and irreparably damaged. Here the City of Los Angeles not only intruded on the process of free collective bar-

gaining, it obliterated it. By insisting that Golden State settle its labor dispute in order to continue to do business, the City nullified the Company's fundamental economic bargaining weapon and rendered it powerless to resist the Teamsters' demands. At the same time, the City gave the Teamsters Union the ultimate weapon in support of its bargaining demands—the power to put an employer out of business unless its demands are met.

Contrary to the Ninth Circuit's reasoning, this destruction of free collective bargaining is not saved from federal preemption just because the City's action concerned transportation, an area in which states and municipalities normally exercise some regulatory control. Of course a city may generally regulate cab companies operating within its boundaries free of labor law preemption, and we do not here contend that a labor dispute in one of those companies should preclude the city from implementing otherwise legitimate regulatory decisions that might incidentally affect that dispute. What a city may not do, however, is what Los Angeles did here—utilize its regulatory authority directly and expressly to coerce the settlement of a labor dispute and thereby render one of the parties to the dispute powerless to resist the other party's demands.

ARGUMENT

The National Labor Relations Act Prohibits The City From Nullifying Golden State's Most Fundamental Economic Weapon and Coercing The Settlement of the Company's Labor Dispute

Since 1935, when the National Labor Relations Act ("NLRA" or "the Act") was passed, this Court has grappled with preemption issues relating to actions under state and local law which might intrude on the federal scheme of labor-management relations envisioned by the Act. Over time, however, the very limited scope of permissible local action has become more clearly delineated, so that, at present, there can be no reasonable argument that the City's actions in this case can be countenanced.

In past decisions, this Court has recognized two separate bases for preempting state and local laws and acts which might interfere with the administration or the purposes of the National Labor Relations Act. *E.g.*, *Metropolitan Life Insurance Co. v. Massachusetts*, —— U.S. ——, 85 L. Ed. 2d 728, 746 (1985); *Brown v. Hotel and Restaurant Employees, Local 54*, —— U.S. ——, 82 L. Ed. 2d 373, 384 (1984). In *San Diego Building Trades Council v. Garmon*, 359 U.S. 236 (1959), the Court identified one branch of preemption which prohibits states or localities from regulating conduct that is arguably protected by Section 7 of the NLRA or arguably prohibited by Section 8 of the Act. "*Garmon* preemption" is primarily designed to protect "the primary jurisdiction of the NLRB to determine in the first instance what kind of conduct is either prohibited or protected by the NLRA." *Metropolitan Life Insurance, supra*, 85 L. Ed. 2d at 746.[4] In determining the permissible scope of local action under this preemption branch, the courts are required to balance

[4] "Primary jurisdiction" in the context of labor preemption means full preemption of state or local governmental action, not simply that the NLRB must first decide the issue. *Sears, Roebuck & Co. v. Carpenters*, 436 U.S. 180, 199 n. 29 (1978).

"the State's interest in controlling or remedying the effects of the conduct in question against the interference with the Board's ability to adjudicate controversies committed to it by the Act, and the risk that the State will sanction conduct that the Act protects." *Id.* at 746 n. 26.

The second branch of preemption, the one involved in this case, was developed in *Local 20, Teamsters v. Morton*, 377 U.S. 252 (1964) ("*Morton*"), and *Lodge 76, International Association of Machinists v. Wisconsin Employment Relations Comm'n*, 427 U.S. 132 (1976) ("*Machinists*"). Often called "*Machinists* preemption," this branch of the preemption doctrine relates to attempts by state or local governments to regulate conduct which is not arguably protected or prohibited by the Act, but which nevertheless may impinge upon the federal scheme of labor-management relations embodied in the Act. It "protects against state interference with policies implicated by the structure of the Act itself, by pre-empting state law and state causes of action concerning conduct that Congress intended to be unregulated." *Metropolitan Life Insurance*, *supra*, 85 L. Ed. 2d at 746. Designed primarily to guard against state interference with the Act's policies of voluntary self-organization and free collective bargaining, *Machinists* preemption has most often been applied to attempts by state and local governments to regulate the use of economic weapons in a labor dispute. *See, e.g.*, *Machinists*, *supra* (state injunction against concerted refusal to work overtime); *Morton*, *supra* (state court finding of liability for union's non-coercive appeal to a secondary employer which was not prohibited by the NLRA).

Machinists preemption is based on the undeniable dictates of the NLRA. In the 50 years since that statute was passed, this Court has repeatedly emphasized that the Act creates a system of labor relations in which labor-management conflict is to be resolved by free collective bargaining unfettered by any governmental intrusion other than the prohibitions and mandates contained in the

Act. "Congress struck a balance of protection, prohibition, and laissez-faire in respect to union organization, collective bargaining, and labor disputes. . . ." Cox, "Labor Law Preemption Revisited," 85 Harv. L. Rev. 1337, 1352 (1972), quoted with approval in *Machinists*, *supra*, 427 U.S. at 140 n. 4. In doing so, Congress expressly recognized that "the essence of collective bargaining is that either party shall be free to decide whether proposals made to it are satisfactory" (*H. K. Porter Co. v. NLRB*, 397 U.S. 99, 104 (1970), *quoting* S. Rep. No. 573, 74th Cong., 1st Sess., 12 (1935)), and it created a system in which the parties' collective bargaining and its results would depend only on their willingness to compromise and their respective economic strength to force compromise by the other party:

> The presence of economic weapons in reserve, and their actual exercise on occasion by the parties, is part and parcel of the system that the Wagner and Taft-Hartley Acts have recognized. . . . [N]ecessity for good faith bargaining between the parties, and the availability of economic pressure devices to each to make the other party incline to agree on one's terms . . . exist side by side.

NLRB v. Insurance Agents' International Union, 361 U.S. 477, 489 (1960) (holding that even the NLRB may not regulate, directly or indirectly, the parties' use of economic weapons not prohibited by the Act). Thus, the Act compels the parties to bargain together in good faith but leaves the bargainers free to agree or not agree and to use or decline to use their respective economic weapons as a catalyst to reaching agreement.

This is the paramount and fundamental premise of our national labor policy—that the Act protects the right of employees to organize and bargain collectively but leaves the ultimate resolution of collective bargaining disputes to be determined by the relative economic strength of the parties. And it is this premise that has led this Court to

prohibit states and localities from taking actions which might interfere with the free collective bargaining mandated by Congress. For example, in *Morton*, *supra*, the Court vacated an Ohio court determination that a union was liable in damages for making direct appeals to a struck employer's customers to cease doing business with the struck employer—an action that had been found to be permissible under the federal Act. In doing so, the Court emphasized that Congress meant the parties' use of economic self-help weapons to be sacrosanct:

> This weapon of self-help, permitted by federal law, formed an integral part of the petitioner's effort to achieve its bargaining goals during negotiations with the respondent. Allowing its use is a part of the balance struck by Congress between the conflicting interests of the union, the employees, the employer and the community. . . . If the Ohio law of secondary boycott can be applied to proscribe the same type of conduct which Congress focused upon but did not proscribe when it enacted § 303, the inevitable result would be to frustrate the congressional determination to leave this weapon of self-help available, and to upset the balance of power between labor and management expressed in our national labor policy. "For a state to impinge on the area of labor combat designed to be free is quite as much an obstruction of federal policy as if the state were to declare picketing free for purposes or by methods which the federal Act prohibits."

377 U.S. at 259-260 (footnote omitted), *quoting Garner v. Teamsters Union*, 346 U.S. 485, 500 (1953).

Similarly, in *Machinists* the Court held that Wisconsin could not enjoin a union and its members from refusing to work overtime in an effort to put economic pressure on the employer to accede to the union's bargaining demands. The Court assumed for the purposes of its decision that the union's activity was neither protected nor prohibited

by the NLRA, but held that the state was foreclosed from regulating the union's conduct:

> Our decisions hold that Congress meant that these activities, whether of employer or employees, were not to be regulable by States any more than by the NLRB, for neither States nor the Board is "afforded flexibility in picking and choosing which economic devices of labor and management shall be branded as unlawful." . . . Rather, both are without authority to attempt to "introduce some standard of properly 'balanced' bargaining power" . . . or to define "what economic sanctions might be permitted negotiating parties in an 'ideal' or 'balanced' state of collective bargaining." To sanction state regulation of such economic pressure deemed by the federal Act "desirabl[y] . . . left for the free play of contending economic forces, . . . is not merely [to fill] a gap [by] outlaw[ing] what federal law fails to outlaw; it is denying one party to an economic contest a weapon that Congress meant him to have available."

427 U.S. at 149-150 (footnote omitted), *quoting NLRB v. Insurance Agents' International Union*, *supra*, 361 U.S. at 498, 497, 500, and Lesnick, "Preemption Reconsidered: The Apparent Reaffirmation of *Garmon*," 72 Col. L. Rev. 469, 478 (1972).

In short, in enacting the NLRA "Congress determined both how much the conduct of unions and employers should be regulated, and how much it should be left unregulated" (*Metropolitan Life Insurance*, *supra*, 85 L. Ed. 2d at 747), and the balance thus struck unquestionably prohibits a state or municipality from coercing the settlement of a bargaining dispute or from interfering with the economic weapons of the parties to such a dispute. As we show below, the City of Los Angeles did both in the instant case.

In February 1981 Golden State Transit Corporation was exercising the two fundamental and federally protected rights described above. On the one hand, it was

refusing to accede to the Teamsters' bargaining demands, thus exercising its freedom *not* to agree which is so vital under the Act. On the other hand, it was backing up its bargaining position with the most meaningful economic weapon available to employers under the Act—i.e., demonstrating to the Teamsters that it had the economic strength to survive a strike.[5] The district court aptly described this "right to rely on . . . economic strength, in the form of weathering a strike," as the "most fundamental weapon in an employer's arsenal" (Pet. App. 32a).

On February 11, 1981 and thereafter, the Los Angeles City Council obliterated those rights being exercised by Golden State. By "merely insist[ing] upon resolution of the [labor] dispute as a condition to franchise renewal" (appellate court opinion, Pet. App. 8a), the City in one fell swoop did three things in direct contravention of federal labor policy and this Court's preemption decisions. First, it attempted to coerce a settlement of the labor dispute by threatening to eliminate one of the parties if agreement was not reached. Second, it prohibited Golden

[5] The economic weapons available to a union involved in a labor dispute are manifold—its members may engage in a general strike, picketing, handbilling, boycotts, slowdowns, "sickouts," overtime refusals, "quickie" strikes, etc., etc. Employers, on the other hand, have only one basic economic weapon—survival. Although there may be several methods for ensuring survival of a strike (e.g., operating with nonstriking personnel, hiring replacements or simply being able to endure a period of nonproduction), the ultimate question any employer asks itself when evaluating its bargaining position is whether it can "take a strike"—i.e., whether it can survive. We recognize, of course, that the lockout is also usually considered one of an employer's economic weapons. In reality, however, a lockout is little more than a "preemptive strike" which allows an employer to choose the timing and/or duration of a disruption in its operations. To that extent, therefore, the lockout is merely another means of demonstrating to a union that the employer can survive a strike, while at the same time perhaps putting additional pressure on the union by forcing it to strike before it is ready.

State from utilizing its most elementary economic weapon by showing the Teamsters it could survive the strike, for a refusal to renew Golden State's franchise meant not only that Golden State could not attempt to operate with nonstriking personnel or replacements, but also that the Company could not even simply "wait out" the strike. Third, had it not been for the fact that Golden State believed the City's actions were clearly illegal and that the courts would enjoin them, the City's actions would have effectively dictated the substantive terms of Golden State's collective bargaining agreement. This Court itself has recognized that the control of economic weapons influences the substantive terms on which the parties contract. *Machinists, supra*, 427 U.S. at 153; *NLRB v. Insurance Agents' International Union, supra*, 361 U.S. at 490. Where, as here, the government removes an employer's only economic weapon and legislates its demise absent contract settlement, a rational employer has no choice but to accede to all of a union's demands.

In view of these facts, it is no answer to Golden State's preemption claims to assert, as the appellate court did below, that the City's actions were permissible because they were directed at activities which were only of "peripheral concern" to the policies of the NLRA (Pet. App. 6a-7a) or because they "did not attempt to dictate terms of the collective bargaining agreement or alter the substantive outcome of the [labor] dispute" (Pet. App. 8a).

In the first place, the "peripheral concern" exception to federal preemption has no applicability in the context of *Machinists* preemption. The "crucial inquiry" under that branch of preemption is "whether Congress intended that the conduct involved be unregulated because left 'to be controlled by the free play of economic forces.'" *Machinists, supra*, 427 U.S. at 140, *quoting NLRB v. Nash-Finch Co.*, 404 U.S. 138, 144 (1971). The answer to that inquiry will inevitably determine whether the conduct in

question is only a peripheral concern of the Act. If Congress intended the conduct to be unregulated, then the conduct is protected as a matter of federal substantive right, it cannot be considered a peripheral concern of the Act, and a state or local government cannot regulate the conduct no matter how strong its interest in doing so.[6] If, on the other hand, the "crucial inquiry" shows that Congress did not intend the particular conduct to be unregulated, then by definition there is no conflict between local regulation and federal law and the local regulation may stand. In short, in the context of *Machinists* preemption, the "peripheral concern" doctrine has no applicability unless one wishes to use it as a catchphrase to describe the conclusion, reached after the "crucial inquiry," that Congress did not intend that the conduct be unregulated.

With respect to the instant case, of course, *Machinists* and its progeny leave no doubt that Congress intended to preclude the City of Los Angeles from denying Golden

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[6] This Court has previously made clear that federal and state interests are not to be balanced in the preemption analysis involving substantive federal rights as opposed to the primary jurisdiction of the NLRB. See, e.g., *Metropolitan Life Insurance, supra*, 85 L. Ed. 2d at 746 n. 27 (Determining the preemption *vel non* of "state rules of general application that affect the right to bargain or to self-organization . . . does not involve in the first instance a balancing of state and federal interests, . . . but an analysis of the structure of the federal labor law to determine whether certain conduct was meant to be unregulated."); *Allis-Chalmers Corp. v. Lueck, supra*, 85 L. Ed. 2d at 217 n. 9 (*Garmon* preemption involving the NLRB's primary jurisdiction over matters arguably protected or prohibited by the NLRA "requires a balancing of state and federal interests . . . [but] where Congress has mandated that federal law should govern . . . balancing of state and federal interests required by *Garmon* preemption is irrelevant, since Congress, acting within its power under the Commerce Clause, has provided that federal law must prevail."); *Brown v. Hotel and Restaurant Employees, supra*, 82 L. Ed. 2d at 384, *quoting Free v. Bland*, 369 U.S. 663, 666 (1962) (Where a "state law regulates conduct that is actually protected by federal law, . . . '[t]he relative importance to the State of its own law is not material.' ").

State the right to remain in business unless it settled its labor contract with the Teamsters. The conduct regulated—Golden State's stance in bargaining and its use of an employer's most fundamental economic weapon—can hardly be said to be a "peripheral concern" of the Act since it is, in fact, the essence of the Act.

Moreover, this result does not change merely because the City's decision generally "concerned transportation" (Pet. App. 7a). While it is obviously true that the City used its regulatory power in the transportation area, it exercised that power solely to intervene in a labor dispute. That Golden State's labor posture—not transportation—was the activity being regulated is manifest from the appellate court's accurate description of the City's action: it "insisted upon resolution of the dispute as a condition to franchise renewal" (Pet. App. 8a).[7] Accordingly, the relevant inquiry in this preemption case is not, as the court of appeals mistakenly thought, whether the City of Los Angeles has the right to regulate transportation or any other activity. Rather, it is whether the City exercised that right to pressure settlement of a labor dispute. If the appellate court's analysis is correct and, accordingly, if the City of Los Angeles may condition an employer's license to do business on the settlement of a labor dispute, then there is no reason why it and other state and municipal governments may not similarly insist upon the resolution of labor disputes as a condition to issuing building permits, zoning variances, environmental permits, liquor licenses and drivers' licenses, or as a condition to providing water, sewage removal, police

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[7] Indeed, the sentence in the appellate court's decision invoking the notion that the City's action was "concerned with transportation" makes clear that the City's actions, in reality, involved labor relations concerns rather than transportation concerns: "Nothing in the record indicates that the City's refusal to renew or extend Golden State's franchise *until an agreement was reached and operations resumed* was not concerned with transportation" (Pet. App. 7a; emphasis added).

or fire protection. And if local governments may make those choices vis-a-vis employers, there is no reason why they may not also deny services or licenses to striking unions and their leaders and members. Clearly Congress never intended such governmental interference with collective bargaining and, just as clearly, the Ninth Circuit's analysis which encourages such interference may not stand.

Equally unavailing is the appellate court's second reason for upholding the City's action—its conclusion that if local regulation of public utilities is not to be unduly restricted, only actions seeking to directly alter the substantive outcome of a dispute or to dictate the terms of the parties' contract should be preempted. The court was wrong on two counts.

First, it was unrealistic for the court to conclude that the City's actions here would not influence the substantive outcome of Golden State's labor dispute. As pointed out previously, this Court has long recognized that "indubitably regulation . . . of 'the choice of economic weapons that may be used as part of collective bargaining [exerts] considerable influence upon the substantive terms on which the parties contract.'" *Machinists*, *supra*, 427 U.S. at 153, *quoting NLRB v. Insurance Agents' International Union*, *supra*, 361 U.S. at 490.

Here the City did not simply make Golden State less effective at the bargaining table by some limited intrusion on the Company's economic power to resist the Teamsters, it completely emasculated Golden State's bargaining clout and placed the Company in a position of having to agree with the Union in order to ensure its very existence. By imposing such a drastic cost on the Company's maintenance of its bargaining position, the City effectively ensured both the substantive outcome of the dispute (a Teamsters victory) and the specific terms of the ultimate agreement (whatever the Teamsters wanted). Although theoretically such tactics could also pressure a union to reach contract settlement because of

the potential loss of jobs, here it was the Teamsters themselves who urged the City Council not to renew Golden State's franchise in the "hope[] that the people employed at [Golden State] would be hired by whatever successor is established to cover the areas which [Golden State] now covers . . ." (J.A. 60). In any event, even if the City's actions had not favored one party over the other and dictated the "substantive outcome" of the dispute, those actions would still have been impermissible. Under federal labor policy it matters not *which* party to a labor dispute is pressured by governmental action or whether both are pressured—the subversion of federal labor policy lies in the fact that the private bargaining process and the free play of economic forces have been breached at all.

Second, the appellate court's concern that preempting the City's action would unduly restrict local regulation of public utilities is equally unfounded. The Chamber recognizes the City's legitimate sphere of operation and regulation, and it does not here suggest that such regulation should be hamstrung just because one of the entities being regulated is involved in a labor dispute. Thus, for example, if the City had made a determination to deny Golden State a franchise renewal because of the Company's failure to abide by the terms of its prior franchise, we do not contend that the City should be barred from implementing that decision merely because Golden State was involved in a labor dispute and the City's action might affect the outcome of that dispute. Similarly, if taxicab service in Los Angeles had been severely disrupted because Golden State was not able to operate during the strike, it may well be that the City could have legitimately insisted that Golden State get its cabs back on the street or give up its franchise to a company that could provide the necessary cab service.[8] In those situations, however, the City would be performing its normal

[8] The City could not, however, have insisted that Golden State settle its labor dispute in order to get the cabs back in operation,

and permissible regulatory functions which would only incidentally affect Golden State's bargaining position and labor dispute. The situation in the instant case is entirely different. Here the City exercised its regulatory power to intervene in the labor dispute in such a manner as directly to affect the dispute by coercing its settlement. The distinction is simple: a labor dispute does not foreclose a state or municipality from acting, but it cannot be the predicate for such action.

CONCLUSION

The decision below disrupts the balanced policy decision Congress made when it enacted the National Labor Relations Act 50 years ago. Congress chose to send employers and employees to the bargaining table with roughly equivalent bargaining power. Employees were granted the right to withhold their labor in support of their bargaining demands (i.e., strike) as long as they could afford to do so, and employers retained their right to resist a strike as long as they could afford to do so. In adopting this system, Congress recognized that a requirement to bargain, even in good faith, would be useless if the Act did not allow the free use of legitimate economic weapons by each party. By protecting each party's unregulated access to legitimate economic weapons left unregulated by the Act, the process of collective bargaining is tempered by the injection of a powerful incentive for the parties to agree and a powerful disincentive for the parties to unreasonably withhold agreement. In other words, the freedom of the parties to resort to economic warfare is the motivating force behind the success or failure of collective bargaining.

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for to do so would have denied Golden State its legitimate economic weapon of utilizing replacement personnel. Thus, the City would be free to act consistent with its regulatory interest (i.e., insisting on having cabs operational), but it could not go beyond that to dictate the labor relations decisions Golden State would make in order to meet the City's legitimate requirements (e.g., settle its dispute or utilize replacements).

The decision below disrupts that bargaining process and the delicate balance established by Congress because it allows local governments to enter a bargaining controversy and to tip the balance of bargaining power to favor one side or the other. More troublesome for employers is the fact that, whatever their political power, that balance will more than likely tip in favor of employees, for no one suggests, at least since this Court decided *Machinists*, that a local government may prohibit or restrict strikes. Indeed, all that is suggested by the decision below in this case is that a local government may take away an employer's bargaining power to withstand a strike by putting it out of business if it does not settle on a new labor agreement. Whatever one may think of the merits of a national labor policy favoring such governmental assistance to employees in collective bargaining, that is not the policy chosen by Congress. And because the City of Los Angeles and those who support its actions have not yet convinced Congress to change its free and balanced collective bargaining system, the City's actions in this case, which directly conflict with Congress' 50-year-old policy judgment, cannot stand. Accordingly, the Chamber respectfully urges the Court to reverse the decision below and rule that the actions of the City of Los Angeles were preempted by federal labor law.

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AMICUS CURIAE

BRIEF

No. 84-1644

In the Supreme Court of the United States

OCTOBER TERM, 1985

GOLDEN STATE TRANSIT CORPORATION, PETITIONER

v.

CITY OF LOS ANGELES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD AS AMICUS CURIAE SUPPORTING PETITIONER

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QUESTION PRESENTED

Whether the court of appeals correctly affirmed summary judgment in favor of a municipality on a claim that its refusal to renew an employer's taxicab franchise unless the employer settled a labor dispute with its striking employees was preempted by the National Labor Relations Act, 29 U.S.C. 151 *et seq.*

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In the Supreme Court of the United States

OCTOBER TERM, 1985

No. 84-1644

GOLDEN STATE TRANSIT CORPORATION, PETITIONER

v.

CITY OF LOS ANGELES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD AS AMICUS CURIAE SUPPORTING PETITIONER

INTEREST OF THE NATIONAL LABOR RELATIONS BOARD

The question presented in this case is whether the National Labor Relations Act, 29 U.S.C. 151 *et seq.*, preempts a city from conditioning renewal of an employer's taxicab franchise solely on the employer's settlement of a collective bargaining dispute with its striking employees. The court of appeals held that the city's action was not preempted because it was "concerned with transportation" and therefore "d[id] not implicate or conflict with [the] federal labor policy" that collective bargaining disputes be resolved by

the free play of economic forces between the parties (Pet. App. 7a).

The system of free collective bargaining is at the core of the Act. See §§ 7 and 8(d), 29 U.S.C. 157 and 158(d). As the agency assigned by Congress the responsibility for administering the Act and implementing the national labor policy expressed therein, the National Labor Relations Board has a significant interest in the proper application of the preemption doctrine, which is designed in part to preclude direct state and local interference with private collective bargaining conduct that Congress intended to leave unregulated.

STATEMENT

1. Petitioner Golden State Transit Corporation was the owner of a taxicab franchise granted by respondent City of Los Angeles. Upon acquiring the franchise in 1977, Golden State entered into a collective bargaining agreement covering its drivers with Teamsters Local 572. In March 1980, Golden State applied to the City for renewal of its franchise; that franchise, as well as those of the City's other taxicab operators, was due to expire on March 31, 1981. In the interim, the City studied its taxicab industry, and various legislative and administrative bodies, including the City Council's Transportation and Traffic Committee, recommended that Golden State's franchise be renewed for a four-year term. Pet. App. 2a, 27a-28a.

The City Council scheduled action on ordinances renewing the franchises of Golden State and other operators for February 11, 1981. Shortly before that meeting, on February 5, the Union informed the City Council that it was involved in a labor dispute with Golden State, the collective bargaining agreement

having expired in October 1980. On the day of the City Council meeting, Golden State's drivers went out on strike. A Union representative appeared before the City Council on February 11 and urged the Council not to approve Golden State's franchise because of the labor dispute. The Council voted on February 11 to renew the franchise of the other operators that had been recommended for long-term renewal, but it postponed consideration of Golden State's franchise until February 17. Pet. App. 2a, 15a, 28a.

At the Council's meeting on February 17, 1981, the Union again opposed Golden State's renewal application on the basis of the labor dispute (J.A. 117). The same day, the Union told Golden State that if it " 'doesn't settle [its] labor dispute, [it is] going to have a lot of trouble renewing [its] franchise' " and later told the employer, "We are going to see that the City revokes or does not renew your franchise if you do not meet our demands" (J.A. 52, 117; citation omitted). The Council conditionally extended Golden State's franchise only until April 30, 1981, provided that the Council found on or before March 27 that this 30-day extension was "in the best interest of the City." No other franchise was made subject to this condition. Pet. App. 2a, 15a, 28a.

The City Council next met on March 23, 1981 to consider renewal of Golden State's franchise. At that meeting, Union representatives accused Golden State of intransigence and bargaining in bad faith, and again asked that the franchise not be renewed. The Union stated that it hoped its drivers would be hired by Golden State's successor and that one operator had assured them that the drivers would be hired if its franchise were extended to cover Golden State's service area. J.A. 52-53, 60, 62; Pet. App. 16a.

Following presentations by the parties, the President of the City Council stated that " 'it will be very difficult to get this ordinance passed to extend this franchise if the labor dispute is not settled by the end of the week' " (Pet. App. 29a). Councilman Cunningham, referring to Golden State's striking drivers, stated (J.A. 66-67):

> I still think that what they are saying to us they don't intend to continue to be wage slaves or continue to be jacked around and jerked around at the whim and caprice of the owner or operator of that facility. I think it would be wise for us as members of this Council to clearly make a statement by turning down this extension[.] [A]s soon as there is an agreement, we can certainly reopen the matter and be able to extend the franchise.

The general manager of the City's Department of Transportation testified at the meeting that he had not received an increased number of complaints about cab service since the strike began (J.A. 69-70). Councilman Yaroslavsky, after noting that a refusal to renew the license might create a more healthy taxicab market, concluded, "my intuition tells me in this case that [Golden State] has not made every effort to [n]egotiate. * * * I just don't like the attitude, * * * I don't like the negotiating posture, * * * we have a responsibility to do justice, * * * and that is why my inclination is to vote * * * to withdraw their franchise" (J.A. 71-72).

The City Council then refused to extend Golden State's franchise beyond March 31, 1981 by a vote of 11 to 1 (Pet. App. 3a, 16a). "It is undisputed that the sole basis for refusing to extend [Golden State's]

franchise was its labor dispute with its Teamster drivers" (*id.* at 29a).

2. Golden State brought this action in the United States District Court for the Central District of California alleging, inter alia, that the City's action was preempted by the National Labor Relations Act (NLRA or the Act), 29 U.S.C. 151 *et seq.* The district court granted a preliminary injunction preserving Golden State's franchise (Pet. App. 26a-32a). After finding that the City refused to renew the franchise solely because of the labor dispute (*id.* at 29a), the district court reasoned (*id.* at 32a):

> By threatening to allow [Golden State's] franchise to terminate unless it entered into a collective bargaining agreement with the Teamsters, the City Council effectively denied [Golden State] of its most basic weapon[,] the economic strength of an on-going franchise. Since Congress has sanctioned the self-help measures taken by [Golden State] here in resisting the signing of a new contract with the Union, the City Council is precluded by the Supremacy Clause from taking legislative action which would frustrate the purposes of the N.L.R.A.

The court of appeals reversed (Pet. App. 18a-25a). Although it upheld the district court's finding that "the city deprived [Golden State] of an economic weapon—the opportunity simply to outlast the strikers" (*id.* at 20a), the court of appeals concluded that Golden State had not demonstrated a likelihood of success on the merits because the regulation of taxicabs is a matter of local interest that Congress did not intend to preempt in the NLRA (*id.* at 21a).

3. On remand, the district court granted summary judgment in favor of the City (Pet. App. 11a-17a).

With respect to the preemption issue, the district court relied solely on the court of appeals' decision reversing the grant of a preliminary injunction to Golden State (*id.* at 17a).

The court of appeals affirmed the grant of summary judgment, although for different reasons than those given on the earlier appeal (Pet. App. 10a). The court of appeals upheld the district court's findings that the City "insisted upon resolution of the [labor] dispute as a condition to franchise renewal" (*id.* at 8a) and that this insistence "altered the balance of economic power" between the parties (*id.* at 4a n.1). It concluded, however, that "[n]othing in the record indicates that the City's refusal to renew or extend Golden State's franchise until an agreement was reached and operations resumed was not concerned with transportation" (*id.* at 7a).

This concern with transportation was, in the court's view, a matter peripheral to the NLRA and therefore excepted from the preemption doctrine (Pet. App. 4a).[1] The court noted the ubiquity of local regulation of public utilities and the impact such regulation may have on labor disputes (*id.* at 7a-8a). In light of the necessity for this regulation, the court determined that "only actions seeking to directly alter the substantive outcome of a labor dispute should be preempted" (*id.* at 8a). Because it concluded that "[t]he City did not attempt to dictate terms of the collective bargaining agreement or alter the substantive outcome of the dispute," the court of appeals held that "[t]he City's refusal to

[1] The court of appeals reversed its earlier determination that transportation activities are matters of local concern that cannot be preempted under the NLRA (Pet. App. 5a-6a).

renew Golden State's franchise is * * * not preempted by the NLRA" (*ibid.*).[2]

INTRODUCTION AND SUMMARY OF ARGUMENT

The court of appeals held that the actions of the City Council in respect to petitioner's franchise renewal were not preempted because they dealt with "transportation," a matter of local concern only "peripheral" to the policies of the National Labor Relations Act. The court properly invoked the City's legitimate interests, but did so in so wholly conclusory a fashion and with so little reference to the sparse record developed below on summary judgment that it is not possible to determine what meaning the court ascribed to these general concerns or how it supposed they applied to the facts of this case. Before turning to the merits of our argument, it is important to understand the nature and scope of the federal labor laws, and how they mesh with the backdrop of local regulation of matters of local concern that Congress did not intend to displace.

1. Since the earliest days of the NLRA this Court has emphasized that Congress intended that Act to be a comprehensive scheme governing the major aspects of labor-management relations within its scope.[3] Not only were the terms of the Act itself intended to provide the general and uniform framework for labor

[2] Judge Norris concurred separately. Although he "perceive[d] * * * serious deficiencies" in the majority's preemption analysis (Pet. App. 10a. n.1), he concluded that there was no evidence that the City's actions had an impermissible purpose or effect (*id.* at 10a).

[3] See, *e.g.*, *Garner* v. *Teamsters Local Union No. 776*, 346 U.S. 485 (1953); see generally *NLRB* v. *Jones & Laughlin Steel Corp.*, 301 U.S. 1 (1937).

relations throughout the nation, but the National Labor Relations Board was to have comprehensive and plenary authority to interpret those terms and to develop national labor policy within the discretion those general terms necessarily implied.[4] In this respect the NLRA differs both from federal regulatory schemes which are not intended to be fully comprehensive, such as the environmental laws,[5] and also from schemes like the antitrust laws, the administration of which is not entrusted exclusively to a single agency to the exclusion of private actions outside of the regulatory framework.[6]

Indeed, the Board not only administers the Act and adjudicates disputes under it, but with few exceptions actions regarding its provisions can only be initiated by the Board's General Counsel. It is this congressional purpose to legislate comprehensively, early recognized by this Court and continuously reaffirmed through the various revisions of the original Act, which must be the touchstone of any preemption analysis.

Though the Act is comprehensive, this Court has always recognized in various formulations two implicit limitations on its reach, limitations that must reasonably be inferred from Congress's purpose to legislate within our federal system, where not only does residual sovereignty reside in the States, but also as a vivid reality large responsibilities for gov-

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[4] See *San Diego Building Trades Council* v. *Garmon*, 359 U.S. 236 (1959).

[5] See, *e.g.*, 42 U.S.C. 7604(e).

[6] Certain private actions with respect to labor relations matters are permissible under Sections 301 and 303 of the Labor-Management Relations Act, 29 U.S.C. 185 and 187. These Sections do not bear on the analysis of this case.

erning the day-to-day activities of ordinary people's lives are assumed by state and local governments. Thus, first of all, local authority over the urgent matters of public welfare and safety and the basic relations expressed in the common law are not lightly to be presumed to have been displaced. Hence the decisions affirming continued local authority to assure freedom from violence[7] and destruction of reputation,[8] and to guarantee the sanctity of promises made to third parties.[9] In none of these instances is the state purporting to alter, affect, or even supplement the regulation of labor relations as such, but rather it acts out of its residual responsibility to maintain the background structures of civil peace and legality which the national scheme must assume but cannot assure.

Second, this Court has recognized that local governments as they legislate for the general welfare of their citizens cannot help but affect indirectly the situation from which the participants in the economic struggle structured by the labor laws wage their bargaining battles. Child welfare laws or workplace safety laws of general applicability deal with matters which may be the subjects of collective bargaining. A statute requiring that any health plan offered in the state, whether or not by an employer, whether or not pursuant to a collective bargaining agreement, must have certain minimum features, has the incidental effect of setting the floor for a matter which has traditionally been the subject of hard bargain-

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[7] *United Construction Workers* v. *Laburnum Construction Corp.*, 347 U.S. 656 (1954).

[8] *Linn* v. *United Plant Guard Workers, Local 114*, 383 U.S. 53 (1966).

[9] *Belknap, Inc.* v. *Hale*, 463 U.S. 491 (1983).

ing.[10] Hospital cost containment legislation may limit the revenues available to an employer and thus the employer's ability to make concessions in collective bargaining.[11] If such incidental effects on collective bargaining were held to be preempted there would be little indeed that a state might do in pursuit of non-labor-related welfare or regulatory goals.

The recognition of these considerations, inevitably raised in our federal system if local responsibilities are not to be automatically overwhelmed whenever Congress enacts, as here, a comprehensive scheme for a limited though crucial subject matter, has given rise to the concepts of local interest, peripheral concern, and incidental effect, concepts which the court of appeals employed in this case. Yet as these concepts have been invoked by this Court, it has always been with a searching and sensitive analysis of the particular circumstances, of the actual purposes served by the local regulation and its actual effect on labor relations. Such an inquiry, if indulged in simply to determine the reasonableness in general of state regulation, would be uncomfortably reminiscent of substantive due process analysis, but here it is driven by a need to relate the state's action to Congress's intent in the NLRA, and thus is inevitable if terms such as "local interest" are not to become mere talismans justifying any and all state impingements on nationally regulated labor relations.

This inquiry is not, moreover, so particularistic as itself to constitute a mere substitution of judicial judgments of the overall wisdom of local legislation.

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[10] *Metropolitan Life Ins. Co.* v. *Massachusetts*, No. 84-325 (June 3, 1985).

[11] *Massachusetts Nurses Ass'n* v. *Dukakis*, 726 F.2d 41 (1st Cir. 1984).

Rather, more general guidelines are available. To begin with, whatever its justification, local action cannot be allowed to affect the central reaches of the federal labor laws.[12] Nor is the list of local concerns requiring special deference infinitely expandable. Rather, it is limited to central areas of local concern (see page 9, *supra*). And while additions to this list may be contemplated, they cannot be casually admitted. Furthermore, where local action does have an affect on the balance of forces between employers and employees, the Court has sought to assure itself that this effect was indeed incidental, *i.e.*, a side-effect of a measure general in scope and palpably directed at non-labor-related ends.[13] Finally, even where these conditions are met, the state purpose cannot be one which could be readily accomplished by means less intrusive on values protected by national labor policy.[14]

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[12] See, *e.g.*, *Nash* v. *Florida Industrial Comm'n*, 389 U.S. 235 (1967).

[13] See, *e.g.*, *Lodge 76, Int'l Ass'n of Machinists* v. *Wisconsin Employment Relations Comm'n*, 427 U.S. 132 (1976). The mere fact that a law is general in scope, however, will not save it from preemption in appropriate circumstances. See *Amalgamated Ass'n of Street, Elec. Ry. & Motor Coach Employees* v. *Lockridge*, 403 U.S. 274, 292 (1971); *Garmon*, 359 U.S. at 244.

[14] In *New York Tel. Co.* v. *New York Dep't of Labor*, 440 U.S. 519 (1979), for example, although the State's purpose was the general and acceptable one of ensuring income to unemployed workers, even this purpose was not sufficient in itself to avoid preemption in the face of the seriously unbalancing effect of the unemployment compensation law as applied to striking workers on the competitive situation of labor and management: congressional intent to permit such a law to stand in the face of this effect was necessary to permit it to stand. See pages 22-23 note 22, *infra*.

2. With these considerations in mind, it is clear that the court of appeals' narrow focus on the conclusory and undifferentiated statement that the City's concern was with transportation services obscured proper analysis of the preemption issue in this case. This issue depends on Congress's intent in the National Labor Relations Act. In the Act, Congress protected the right of employers and employees to rely on their respective economic power in settling collective bargaining disputes. Neither the Board nor state or local governments may regulate those aspects of a labor dispute that Congress intended to be governed by the free play of economic forces. Such state and local regulation is preempted. *Lodge 76, Int'l Ass'n of Machinists* v. *Wisconsin Employment Relations Comm'n*, 427 U.S. 132 (1976).

The mere invocation by the City of an interest in transportation cannot exclude its regulation from the preemption doctrine. Indeed since petitioner was in the taxi business any regulation of it had something to do with transportation; yet the taxi business is not exempt from the NLRA. Rather, the appropriate inquiry is whether Congress can be taken to have intended in the Act to remove particular labor relations conduct from the sphere of local regulation. That the conduct arises in the context of transportation regulation may help to elucidate congressional intent. And proper analysis of that intent must take into account that legitimate local regulatory activity may often have substantial though indirect effects on the outcome of the collective bargaining process so that such effects alone cannot be sufficient to mandate preemption. This Court has also made clear, however, that it is that congressional intent which must control and not some balance of national and local interests struck

ad hoc by a reviewing court. *Metropolitan Life Ins. Co.* v. *Massachusetts*, No. 84-325 (June 3, 1985), slip op. 24 n.27; *Amalgamated Ass'n of Street, Elec. Ry. & Motor Coach Employees* v. *Wisconsin Employment Relations Board*, 340 U.S. 383 (1951). Where the regulation incidentally burdens the exercise of a federally guaranteed right, therefore, it is at least incumbent on the state or locality to demonstrate a sufficiently close and urgent relationship between the burden imposed and the achievement of a legitimate interest that Congress cannot be thought to have preempted the regulation. Judged by this standard, summary judgment in favor of the City was plainly erroneous. The case should be remanded for further proceedings under the correct legal standard.

ARGUMENT

THE COURT OF APPEALS ERRED IN AFFIRMING THE GRANT OF SUMMARY JUDGMENT IN FAVOR OF THE CITY ON THE BASIS THAT THE CITY'S REFUSAL TO RENEW THE TAXICAB FRANCHISE OF AN EMPLOYER UNLESS IT RESOLVED ITS LABOR DISPUTE IS A MATTER OF PERIPHERAL CONCERN UNDER THE NLRA

A. Congress Protected The Right Of Parties To Collective Bargaining Disputes To Resolve Their Differences Through The Free Play Of Economic Forces

Employees are guaranteed the right to bargain collectively in Section 7 of the National Labor Relations Act, 29 U.S.C. 157. In Section 8(d) of the Act, 29 U.S.C. 158(d), Congress specified that the duty to bargain "does not compel either party to agree to a proposal or require the making of a concession." This Section permits employers and employees to rely, within the limits stated in the Act, on their own eco-

nomic strength in settling collective bargaining disputes.

This Court has therefore long held that the Board cannot "regulate what economic weapons a party might summon to its aid." *NLRB* v. *Insurance Agents' Int'l Union* (*Insurance Agents*), 361 U.S. 477, 490 (1960). The reason for this rule is plain (*ibid.*):

> [I]f the Board could regulate the choice of economic weapons that may be used as part of collective bargaining, it would be in a position to exercise considerable influence upon the substantive terms on which the parties contract. * * * Our labor policy is not presently erected on a foundation of government control of the results of negotiations. * * * Nor does it contain a charter for the National Labor Relations Board to act at large in equalizing disparities of bargaining power between employer and employee.

The ability to rely on one's economic power in resolving collective bargaining disputes, the Court concluded (*id.* at 489), "is part and parcel of the system that the [NLRA] ha[s] recognized." Thus, for example, unions may strike,[15] and employers may attempt to continue operating by hiring permanent replacements for the strikers.[16]

State and local governments have no more authority than does the Board to regulate the resort to economic weapons by parties to a labor dispute. In *Lodge 76, Int'l Ass'n of Machinists* v. *Wisconsin Employment Relations Comm'n* (*Machinists*), 427 U.S. 132 (1976), the Court applied the teachings of *Insurance Agents* to preempt a state order prohibiting a union's concerted refusal to work overtime. The Court observed that Congress intended that certain conduct "be controlled by the free play of economic forces" rather than be subjected to governmental regulation (*id.* at 140; quotation marks omitted). Accordingly, state regulation that upsets the balance struck by Congress "between the uncontrolled power of management and labor to further their respective interests" (*id.* at 146; quotation marks omitted) must be preempted. Like the Board, states may not " '[enter] into the substantive aspects of the bargaining process to an extent Congress has not countenanced' " (*id.* at 149, quoting *Insurance Agents*, 361 U.S. at 498).

Similarly, in *Local 20, Teamsters Union* v. *Morton*, 377 U.S. 252 (1964), the Court held that a state could not prohibit certain secondary boycott activity that Congress had not prohibited. "The inevitable result" of allowing such state regulation to stand, the Court reasoned (*id.* at 260), "would be to frustrate the congressional determination to leave this weapon of self-help available, and to upset the balance of power between labor and management expressed in our national labor policy." As the Court recently noted, "[t]hese cases rely on the understanding that in providing in the NLRA a framework for self-organization and collective bargaining, Congress determined both how much the conduct of unions and employers should be regulated, and how much it should be left unregulated." *Metropolitan Life Ins.*

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[15] *Amalgamated Ass'n of Street, Elec. Ry. & Motor Coach Employees* v. *Wisconsin Employment Relations Board*, 340 U.S. 383 (1951).

[16] *NLRB* v. *Mackay Radio & Tel. Co.*, 304 U.S. 333 (1938).

Co. v. *Massachusetts*, No. 84-325 (June 3, 1985), slip op. 25.[17]

B. The Invocation Of The City's Legitimate Concern With Transportation Is Not Sufficient In Itself To Exempt Its Action From The Operation Of The Preemption Doctrine

1. "[A]s in any preemption analysis, [t]he purpose of Congress is the ultimate touchstone." *Metropolitan Life Ins. Co.*, slip op. 22 (quotation marks omitted). In *San Diego Building Trades Council* v. *Garmon*, 359 U.S. 236 (1959), the Court addressed in part conduct "*arguably* subject to § 7 or § 8 of the Act" (*id.* at 245; emphasis added). In such circumstances, preemption is intended not to protect a federal right but to safeguard the primary jurisdiction of the Board and thereby to avoid the *potential* for conflict between state and federal regulation. While preemption presumptively follows from the potential for conflict, state regulation may stand where it addresses activity that is "a merely peripheral concern" of the NLRA (*id.* at 243) or is "deeply rooted in local feeling and responsibility" (*id.* at 244). A balancing test to determine whether "[t]he state interests involved * * * outweigh any possible interference with the Board's function" has therefore been established under this branch of the preemption doctrine. *Belknap, Inc.* v. *Hale*, 463 U.S. 491, 511 (1983); see *Local 926, Int'l Union of Operating Eng'rs* v. *Jones*, 460 U.S. 669, 676 (1983).

This form of balancing, however, is not directly relevant to preemption under the *Machinists* doctrine:

> If the state law regulates conduct that is actually protected by federal law, * * * pre-emption follows not as a matter of protecting primary jurisdiction, but as a matter of substantive right. Where * * * the issue is one of an asserted substantive conflict with a federal enactment, then "[t]he relative importance to the State of its own law is not material . . . for the Framers of our Constitution provided that the federal law must prevail."

Brown v. *Hotel & Restaurant Employees Int'l Union Local 54*, No. 83-498 (July 2, 1984), slip op. 11, quoting *Free* v. *Bland*, 369 U.S. 663, 666 (1962). Where Congress intended that activity be left unregulated by the States, the Supremacy Clause requires that its intent prevail, regardless of the relative strengths of the federal and local interests at stake.[18]

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[17] Although *Machinists* and *Morton* addressed preemption of state regulation of union and employee activities, it is clear that resort to economic strength or self-help (such as hiring replacement workers) is a right of an employer as well as of its employees. Thus, "[w]hether self-help economic activities are employed by employer or union, the crucial inquiry regarding preemption is the same: whether 'the exercise of * * * state authority to curtail or entirely prohibit self-help would frustrate effective implementation of the Act's process[]'" of free collective bargaining. *Machinists*, 427 U.S. at 147-148, quoting *Brotherhood of R.R. Trainmen* v. *Jacksonville Terminal Co.*, 394 U.S. 369, 380 (1969).

[18] As *Metropolitan Life Ins. Co.* makes clear (slip op. 24 n.27), the distinction between those rights that Congress affirmatively protected in the NLRA and those activities that it intended to be left unregulated is irrelevant in this context. The determinative factor is Congress's intent, not how it expressed that intent: "'[T]he failure of Congress to prohibit certain conduct warrant[s a] negative inference that it was deemed proper, indeed desirable * * * to be left for the free play of contending economic forces.'" *Machinists*, 427 U.S. at 140 n.4, quoting Lesnick, *Preemption Reconsidered: The*

The Court recently explained the appropriate inquiry in *Metropolitan Life Ins. Co.* v. *Massachusetts*, *supra*. Referring to the *Machinists* line of cases, the Court noted that "[s]uch preemption does not involve in the first instance a balancing of state and federal interests, * * * but an analysis of the structure of the federal labor law to determine whether certain conduct was meant to be unregulated" (slip op. 24 n.27). The Court explained, however, that "[a]n appreciation of the State's interest in regulating a certain kind of conduct may still be relevant in determining whether Congress in fact intended the conduct to be unregulated" (*ibid.*). Thus, Congress surely intended to leave the states room to pursue legitimate local regulatory purposes notwithstanding an incidental effect on labor relations.

The court of appeals erred, however, in resting its conclusion on the mere fact of the City's concern with transportation (see Pet. App. 6a-7a).[19] To the extent that the court of appeals concluded that the City was entitled to regulate the labor relations of Golden State and its employees merely because the employer provided transportation services, this Court long ago laid

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Apparent Reaffirmation of Garmon, 72 Colum. L. Rev. 469, 478 (1972).

[19] It is irrelevant whether the court of appeals' approach is predicated on the "peripheral concern" (see Pet. App. 4a) or the "local interest" (see *id.* at 21a) exceptions to *Garmon* preemption. Whether transportation is viewed as peripheral to the NLRA or as an important local interest, the court of appeals' approach is fundamentally flawed because it fails accurately to assess Congress's intent The court of appeals "confused [d] preemption which is based on actual federal protection of the conduct at issue from that which is based on the primary jurisdiction of the National Labor Relations Board" (*Brown*, slip op. 10).

that notion to rest. In *Amalgamated Ass'n of Street, Elec. Ry. & Motor Coach Employees* v. *Wisconsin Employment Relations Board*, 340 U.S. 383 (1951), the Court rejected a similar argument in holding that a state law prohibiting strikes by employees of public utilities, including those providing transportation, was preempted by the NLRA. The State's argument "stress[ing] the importance of gas and transit service to the local community and urg[ing] that predominantly local problems are best left to local governmental authority for solution" (*id.* at 397) was unavailing because Congress's protection of the right to strike "occupied th[e] field and closed it to state regulation" (*id.* at 390; quotation marks omitted).

2. Resolution of whether the City's action in this case was preempted by the NLRA requires an analysis of whether and in what manner the City burdened a right protected under the NLRA. See, *e.g.*, *Belknap, Inc.* v. *Hale*, 463 U.S. at 499-507 (*Machinists* preemption inapplicable to state breach-of-contract action that did not have substantial impact on conduct that Congress intended to be left unregulated). If the City directly intruded into the parties' labor relations by prohibiting recourse to economic self-help, the matter is at an end under *Machinists*. If, on the other hand, the City's action indirectly affected the bargaining process, the City must demonstrate that Congress nonetheless must be taken to have intended to permit its action, notwithstanding its ancillary effect of interfering with the collective bargaining process, if that action is not to be preempted. On the City's motion for summary judgment, factual disputes and inference from the facts are resolved against it and in favor of Golden State. *E.g.*, *Harlow* v. *Fitzgerald*, 457 U.S. 800, 816 n.26 (1982).

a. In determining whether the City burdened a protected right, it is first necessary to identify precisely what the City did. On one view of the case, the City Council voted only to refuse to grant Golden State a 30-day extension of its franchise. Because the City had earlier conditioned that extension on whether it would be in the best interests of the City, the Council's vote may be interpreted simply as a finding that the extension would not in fact serve the City's transportation needs. See pages 3-4, *supra*.

Golden State's labor dispute could have had obvious relevance to the City's concern that an effective level of service be provided to its residents. It would not have been impermissible, therefore, for the City to have conditioned renewal of the franchise upon Golden State's demonstration that it could provide sufficient service to meet the City's needs despite the strike, perhaps by hiring replacements.[20] This of course could have had an effect on the bargaining process between employer and union, but it would not have directly interfered with Golden State's freedom

[20] Similarly, the City could have concluded that the strike demonstrated that the additional service represented by Golden State's fleet was not necessary to provide an adequate level of taxicab service and that reducing the number of taxicabs by that amount would improve the industry's economic health. Conditioning renewal of the franchise on settlement of the labor dispute (if that is in fact what happened), however, would seem to belie this goal: if the additional taxi service were in fact unnecessary, settlement of the labor dispute would have been irrelevant. Moreover, Golden State could not be penalized by the City for its involvement in a labor dispute by discriminatory termination of its franchise. Whether the City subsequently awarded Golden State's franchise to another operator or renewed other franchises would be relevant to these inquiries; the courts below, however, did not make findings in this regard.

to rely on its federally protected right to attempt to last out the strike. A finding of preemption under such circumstances would be difficult to support: the preemption doctrine does not grant federal courts a license to engage in substantive due process review of the desirability of local regulations of traditional local concerns merely because the affected parties are involved in a collective bargaining dispute.

The facts appear to be otherwise, however. Both courts below found that the City had refused to renew Golden State's franchise unless the employer settled its labor dispute. They also found that this refusal had a significant impact on the economic balance of power between the employer and its union. See page 5, *supra*. Thus, the City's actions appear directly to have regulated Golden State's exercise of its federally protected right to rely on its economic power to last out the strike. If so, its action must be preempted under *Machinists* (see also note 27, *infra*).

The court of appeals' distinction (Pet. App. 8a) between "attempt[ing] to dictate terms of the collective bargaining agreement" and "insist[ing] upon resolution of the dispute as a condition to franchise renewal" is without substance. Under Section 8(d) of the Act, neither the Board nor state and local governments have any more authority to insist that parties reach an agreement than they do to order them to agree to specified terms. See pages 13-15, *supra*. Moreover, in this case, the Union had made clear its preference to put petitioner out of business and to rely on assurances that its members would be hired by other operators (see page 3, *supra*). Thus, the effect and indeed the purpose of the City's condition was to require Golden State to agree to the Union's terms if it wanted to keep its franchise.

b. However, it is not entirely clear on the state of this record that the City's action must be deemed to have been preempted under *Machinists*. Congress did not intend to preempt the States from pursuing legitimate local regulatory interests even when their actions have an incidental effect on the outcome of collective bargaining agreements, *Metropolitan Life Ins. Co.*, slip op. 22-32 (state mandated-benefit law not preempted by NLRA). Just as "Congress developed the framework for self-organization and collective bargaining of the NLRA within the larger body of state law promoting public health and safety" (*id.* at 30), so it must have recognized a wide legitimate sphere of local action with respect to transportation.[21] Thus, the effect of the City's action on the balance of economic power, while a significant factor, will not always be sufficient to mandate preemption in this area (absent direct intrusion into the labor dispute or bargaining process). If incidental interference with a federally protected right has in fact been shown, however, a presumption of preemption follows, and the burden must rest with the City to demonstrate a congressional intent to permit its regulation, rather than the other way around.[22]

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[21] For example, a City's regulation of the number of taxicabs on its streets and of the rates they may charge obviously will have a significant effect on collective bargaining agreements reached between employers and drivers, but it can scarcely be contended that such regulation is therefore preempted by the NLRA. Cf. *Massachusetts Nursing Ass'n* v. *Dukakis*, 726 F.2d 41 (1st Cir. 1984).

[22] See *New York Tel. Co.* v. *New York Dep't of Labor*, 440 U.S. 519, 549 (1979) (Blackmun, J., joined by Marshall, J., concurring in the judgment) (emphasis in original) (under *Machinists*, "there *is* pre-emption unless there is evidence of congressional intent to tolerate the state practice"). The three

The Court has struggled before with such an inquiry, without offering definitive guideposts for analysis. See *New York Tel. Co.* v. *New York Dep't of Labor*, 440 U.S. 519 (1979); note 22, *supra*. In light of the unusual facts of the present case [23] and its unsatisfactory procedural posture,[24] this case does not

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dissenting Justices in *New York Telephone* agreed that if a state law interferes with conduct that Congress left unregulated in the NLRA, it is preempted unless Congress intended otherwise. See *id.* at 555-556, 560-561, 566 (Powell, J., joined by the Burger, C.J. and Stewart, J., dissenting). In *New York Telephone*, the Court upheld a state law granting unemployment compensation benefits to striking employees. The views of the plurality of three Justices failed to gain the acceptance of a majority of the Court, and the case was decided on the narrow ground of Congress's intent with respect to unemployment compensation as expressed in the legislative histories of the NLRA and the Social Security Act, which were passed within a short time of one another. See *id.* at 540-546 plurality opinion); *id.* at 546-547 (Brennan, J., concurring in the result); *id.* at 547-551 (Blackmun, J., concurring in the judgment). The case therefore cannot be read as a retreat from the analysis adopted in *Machinists*. To the contrary, a majority of the Court reaffirmed that analysis.

[23] It is rare to see a union that represents the involved employees attempt to put an employer out of business as was done here, for the obvious reason that the employees have nothing to gain by losing their jobs. Here, however, the Union drivers believed that they would be hired by whichever operator received Golden State's franchise after it expired, and they therefore had no incentive to help their employer to stay in business (see page 3, *supra*).

[24] The case arises on summary judgment and there do not appear to be factual findings on important issues related to precisely what the City Council legislatively enacted and the extent to which the City may have been furthering legitimate regulatory concerns. See pages 25-26, *infra*. For these reasons, it is difficult to identify with precision a general rule for determining the leeway that Congress intended to allow states

seem suitable for a detailed clarification of the law without a more thoroughgoing analysis by the courts below of the facts and the law as applied to those facts. The most important criteria to guide the analysis seem fairly clear.

In the absence of express statutory direction, the most effective way for the City to carry its burden of showing an intent not to preempt would be for it to point to legislative history showing that Congress had in fact considered the sort of regulation undertaken and had intended to permit it, as in *New York Telephone* (see note 22, *supra*). Failing that (and there is no suggestion of it here), the City should be required to demonstrate that its action furthered a legitimate local concern without undue ancillary interference with the protected labor activities of Golden State. Congress must be understood to have intended that states not directly or gratuitously interfere with labor relations while pursuing other goals. By the same token, Congress did not intend in the NLRA to prevent states from regulating in areas of local concern notwithstanding an accompanying incidental effect on labor relations.[25] See,

in pursuing their regulatory goals while interfering with rights under the NLRA: in the absence of concrete facts found below, the discussion remains at an unsatisfactorily abstract level. We therefore identify the appropriate concerns in broad outline, rather than attempt to construct a more specific test for ascertaining congressional intent in this area. See generally *International Ass'n of Machinists* v. *Gonzales*, 356 U.S. 617, 619 (1958) (Frankfurter, J.) ("The statutory implications concerning what has been taken from the States and what has been left to them are of a Delphic nature, to be translated into concreteness by the process of litigating elucidation.").

[25] We do not think that it would be appropriate in the context of this case to make this standard any more concrete at

e.g., *Massachusetts Nurses Ass'n* v. *Dukakis*, 726 F.2d 41, 43 (1st Cir. 1984) (footnote omitted) (state hospital cost containment law not preempted partly because the law "affects the labor-management relationship only indirectly through its regulation of the employers' annual gross income"); *Amalgamated Transit Union* v. *Byrne*, 568 F.2d 1025 (3d Cir. 1977) (en banc) (state not preempted from announcing that it would not raise a transportation subsidy to cover an uncapped cost-of-living clause that was the subject of ongoing bargaining).

3. Judged by these standards, it is plain that summary judgment in favor of the City was erroneous. Construing the facts in Golden State's favor, the City burdened the employer's right under the NLRA to rely on its own economic strength to last out the strike, and the City's legitimate concerns for the service provided by and economic health of its taxicab industry could apparently have been furthered by routes considerably less restrictive of the employer's collective bargaining conduct.

Nor do we believe that summary judgment should be entered for petitioner on the record as it now stands, adjudicating at this juncture that the City's action was preempted. Because of the errors in the court of appeals' analysis in its two opinions, the factual record is incomplete in important respects. First, the courts below failed fully to analyze the regulatory action taken by the City. Although the

this stage of the proceedings (see note 24, *supra*). In some instances, Congress may have intended that states pursue the regulatory alternative with the very least necessary impact on labor relations. In other situations, Congress may have intended the states to have more freedom to regulate, limited only by the requirement that they not unreasonably affect labor relations. It is unnecessary to reach this question in order to decide this case.

courts found that the City conditioned renewal of the franchise on settlement of Golden State's labor dispute, it is not clear whether this condition was imposed by the City Council as part of its legislative action or whether it refers simply to Golden State's less formal understanding on the basis of pronouncements of individual Council members. Nor is the extent to which this condition remained in force at the time the Council voted to deny Golden State a 30-day extension of its franchise clear on the record (see note 20, *supra*). These facts may be significant for determining whether the City did in fact directly burden Golden State's protected labor rights.[26]

Second, the City has not yet been required to come forward with evidence explaining what legitimate transportation interests were served by its actions and the extent to which any incidental impairment of Golden State's bargaining power was necessary to accomplish those interests. While it may be difficult at this stage to conceive of a permissible construction of the City's regulatory conduct, which appears to have

[26] While unavowed pressure tactics on the part of a state or local government might still give rise to preemption in appropriate circumstances, the inquiry is considerably more complex than where the official legislative act bears on its face an improper purpose to put a thumb on the scales of the balancing of power between labor and management. In identifying precisely what action the City Council took, it is important to separate the motives of individual Council members from the effect of the City's actions. See generally *Pacific Gas & Elec. Co.* v. *State Energy Resources Conservation & Development Comm'n*, 461 U.S. 190, 216 (1983) ("inquiry into legislative motive is often an unsatisfactory venture"); *United States* v. *O'Brien*, 391 U.S. 367, 383 (1968) ("[i]nquiries into [legislative] motives or purposes are a hazardous matter"); *Dean Milk Co.* v. *City of Madison*, 340 U.S. 349, 354 (1951) (effect of state action, not legislative intent, is determinative under the Commerce Clause).

imposed settlement of the labor dispute as the sine qua non of franchise renewal,[27] the City should be required to make its case in the lower courts. A generalized reference to transportation cannot be enough.

CONCLUSION

The judgment of the court of appeals should be vacated and the case remanded for further proceedings.

Respectfully submitted.

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[27] There would be little doubt, for example, of the invalidity under the NLRA of a general city ordinance or rule specifying that franchise renewal applications will be denied simply because a labor dispute is in progress at the time of, or remains unsettled for a specified period after, expiration of the existing franchise.

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AMICUS CURIAE

BRIEF

No. 84-1644

IN THE
Supreme Court of the United States
OCTOBER TERM, 1985

GOLDEN STATE TRANSIT CORPORATION,
Petitioner,

v.

CITY OF LOS ANGELES,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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BRIEF FOR THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS AS AMICUS CURIAE

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BRIEF FOR THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS AS AMICUS CURIAE

The American Federation of Labor and Congress of Industrial Organizations ("AFL-CIO"), a federation of 95 national and international unions with a total membership of approximately 13,000,000 working men and women, submits this brief *amicus curiae* with the consent of the parties pursuant to the Rules of this Court.

SUMMARY OF ARGUMENT

The question of law that petitioner tenders to the Court for resolution rests on the premise that the reason that respondent did not renew petitioner's taxicab franchise was to support the union and the employees in their labor dispute with petitioner and to put pressure on the petitioner to settle the strike. That factual premise has not

been established on this record; the lower courts have not so found, and the record bearing on the issue is incomplete. Because that is so, this case does not provide a proper vehicle for addressing the sensitive and novel legal issue that has been raised, and the writ of certiorari should be dismissed as improvidently granted.

If the Court were to conclude that the absence of factual findings is not determinative and that, in fact, the respondent's reason for not renewing petitioner's franchise was to affect the labor dispute, then the legal issue petitioner addresses would, indeed, be properly raised. The briefs of petitioner and its supporting *amici curiae* suggest two alternative theories to support their claim of preemption here; we address only one of those theories.

The first theory is closely tailored to the particular facts of this case and, specifically, to the unusual nature of the governmental action at issue in this case: the nonrenewal of a franchise which is required as a condition of operating a taxicab business in Los Angeles. Petioner argues that the National Labor Relations Act ("NLRA or "the Act") does not permit a State or municipality to force an employer out of business in retaliation for the employer's refusal to agree to bargaining demands of his employees. The briefs of the parties fully address this contention, and we have nothing to add to that discussion.

The second theory of preemption implicated here is far broader: it ignores the unique consequences that flow from the nonrenewal of a franchise to do business and instead argues that the NLRA preludes the States from taking any action whose purpose is to affect a labor dispute. That theory is overbroad and misconceives the policies of the Act and the teaching of this Court's preemption decisions.

Nothing in the *Machinists* branch of the preemption doctrine—on which petitioner and its *amici curiae* heavily rely—supports this theory. What is most significant about that doctrine for present purposes is that it was developed in the context of direct state regulation of private conduct, *viz*, the establishment and enforcement of legal norms to govern such conduct. But as this case and No. 84-1484, *Wisconsin Department of Industrial, Labor and Human Relations v. Gould, Inc.*, both illustrate, States act in a variety of capacities other than that of regulator: for example, States purchase and deliver goods and services and States administer a variety of programs through which money or other benefits are distributed to individuals and businesses. Nothing in the *Machinists* doctrine addresses the question of whether the States enjoy any measure of freedom to refuse to extend economic advantages to one side or the other in a labor dispute.

Moreover, it is most unlikely that Congress intended to absolutely preclude any such actions by the States. Such a rule would place extraordinary restrictions on the perogatives of the States—restrictions that Congress did not place even on private enterprises. And such a rule would not truly disengage the States from labor disputes but would involve the State on the side of the party with whom the State happens to have an economic relationship. While there no doubt are limitations on the permissible use of a State's economic leverage in the course of a labor dispute, those limitations must be derived from a more particularized analysis of specific state actions than petitioner's second theory would allow.

ARGUMENT

A. This case has been presented to the Court as posing a question of law concerning the extent of the preemptive effect of the National Labor Relations Act, as amended, 29 U.S.C. § 151 *et seq.* ("NLRA" or "the Act"), *viz*, whether the NLRA precludes a State or municipality from deciding not to renew a taxicab franchise because the franchise holder has failed to reach a collective bar-

gaining agreement with the representative of its employees. That question rests on the premise that, in fact, the reason that the Los Angeles City Council decided not to renew petitioner's franchise was to support the union and the employees and to put pressure on the petitioner to settle the strike rather than because of, *e.g.*, an assessment of either the transportation needs of the citizents of the City or the quality of the service provided by petitioner. That factual premise has not been established on this record.

To be sure, in granting a preliminary injunction to petitioner, the District Court did state that it was "undisputed that defendant City Council's refusal to renew [petitioner's] taxicab franchise was based solely on the grounds that [petitioner's] union drivers were on strike." But that statement is ambiguous. The statement could mean that the City Council denied the franchise renewal in order to support the union and the employees and to put pressure on the petitioner to settle the strike; if that were true, then the preemption question posed by petitioner would be squarely presented. But the district court's statement also could be read to mean that the franchise was not renewed because, as the result of the work stoppage, petitioner was incapable of providing safe and reliable service to the City's residents. If that were the basis of the Council's action, then the question petitioner tenders would not be properly raised since that question presupposes and intent on the Council's part to intrude into the labor dispute on one side or the other, not an intent to take proper account of the strike's effect on the petitioner's ability to provide the community service for which the franchise was issued in the first place.[1]

[1] *See also* Br. of the National Labor Relations Board as *Amicus Curiae* at 20 ("Golden State's labor dispute could have had obvious relevance to the City's concern that an effective level of service be provided to its residents. It would not have been impermissible, therefore, for the City to have conditioned renewal of the franchise upon Golden State's demonstration that it could provide sufficient service to meet the City's needs . . .").

In any event, whatever the district court may have meant by its statement at the preliminary injunction stage that it was "undisputed that defendant City Council's refusal to renew [petitioner's] taxicab franchise was based solely on the grounds that [petitioner's] union drivers were on strike," it is clear that by the time the district court entered the judgment under review here dismissing petitioner's complaint the City did dispute petitioner's claim that the Council's purpose in denying the franchise renewal was to pressure the petitioner to settle the strike; indeed in the interim the City had specifically argued in the court of appeals that "interference in a labor dispute . . . was *not* the purpose behind [the Council's] actions. . ." 686 F.2d at 759 (emphasis added). Neither the appellate court nor the district court in dismissing the complaint addressed that argument or made any findings on the disputed issue of the City Council's motivation; indeed, as the National Labor Relations Board states in its brief *amicus curiae*, "the factual record is incomplete in important respects," NLRB Br. at 25.

A determination by the Council that the strike rendered petitioner incapable of providing adequate service could have the consequence of placing added pressure on petitioner to settle the strike, but such an effect cannot suffice to establish preemption. There are a host of actions by a city or State that may affect the balance of power in a labor dispute because that balance is invariably dependent upon numerous factors extrinsic to the parties' labor relations. For example, governmental action that influences the level of unemployment will necessarily have an impact on labor disputes by making it more or less difficult for an employer to find replacements for striking employees. Similarly, governmental action that affects the costs of goods and services will also affect labor disputes, by making it more or less difficult for striking employees to forego their earnings. Nothing in the labor law preemption doctrine precludes a State from taking actions merely because, by so doing, the State may incidentally affect the balance of power between labor and management. *Cf. American Ship Bldg. v. Labor Board*, 380 U.S. 300 (1965); *Personnel Administrator of Mass. v. Feeney*, 442 U.S. 256 (1979).

Because that is so, this case does not provide a proper vehicle for addressing the sensitive and novel legal issue that has been raised. We, therefore, respectfully suggest that the appropriate course is to dismiss the writ of certiorari as improvidently granted.

B. If the Court were to conclude that the absence of factual findings just outlined is not determinative and that, in fact, the Council's reason for not renewing petitioner's franchise was to affect the labor dispute, then the legal issue petitioner tenders would, indeed, be properly raised. The question for decision, of course, would be whether Congress intended to preempt the City's action; as the Court stated just last Term, "in any preemption analysis, 'the purpose of Congress is the ultimate touchstone,'" *Metropolitan Life Insurance Co. v. Massachusetts*, —— U.S. ——, 53 L.W. 4616, 4622 (June 3, 1985).

The briefs of petitioner and its supporting *amici curiae* suggest two alternative theories to support their claim that Congress intended preemption here. In this section of our brief we address one of those theories.

1. The first theory offered by petitioner is closely tailored to the particular facts of this case and, specifically, to the unusual nature of the governmental action at issue here: the nonrenewal of a franchise which franchise is required as a condition of doing business with the general public. Petitioner argues that, in enacting the NLRA, Congress made the judgment that employers are entitled to reject the bargaining demands of their employees and to suffer a strike instead, and the further judgment that an employer whose employees go on strike is entitled to attempt to continue to operate during the strike. Petitioner contends that by refusing to renew its franchise to do business in the city unless petitioner reached agreement with its employees, Los Angeles upset these congressional judgments just as surely as if Los Angeles had mandated a settlement on the employees' terms or had banned the

hiring of strike replacements. Petitioner puts the argument this way:

> Free and voluntary collective bargaining cannot coexist with the pressures imposed by the City in this case. An employer's right to disagree is meaningless if a municipality can condition the continued existence of its business upon immediate resolution of a disagreement with a labor union. . . . To require one party to settle or suffer legislated extinction is to deprive that party of its right to reject the other side's demands, and thereby to eviscerate the principle of free collective bargaining that lies at the very heart of the Act.
>
> * * * *
>
> Here, the City of Los Angeles denied management its most basic economic weapon by conditioning the continued existence of its business upon immediate resolution of the labor dispute, thus decreeing an end to Golden State's efforts to resist the strike. . . . If the right to resort to economic weapons is to have any meaning at all, that type of government action cannot stand. [Petr. Br. at 21-22, 25]

Insofar as the issue here is limited to the permissibility of not renewing a struck employer's franchise to do business with the general public,[2] the competing considerations bearing on whether Congress intended to preclude such an action are fully developed in the briefs of the parties. If this were the only issue being raised here, we would not be participating in this case as we do not

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[2] Petitioner's argument applies only where the franchise in question is requried as a condition of doing business with the general public. Not all franchises issued by governments are of that kind. A franchise may also be awarded, following a competitive bidding process, as a means of authorizing a particular business to perform services for or in lieu of the State; this is true, for example, when the government awards a franchise to sell food at an airport, park, hospital or other governmental facility. Such a franchise is closely akin to a contract to buy and sell and the nonrenewal of such a franchise would raise a very different question. *See* pp. 12-13 *infra*.

believe we have anything of substance to add to the parties' discussion of that issue.

2. The briefs of petitioner and its *amici curiae* also implicate a second and far broader theory of preemption. That theory ignores the unique circumstance that this case concerns the nonrenewal of a franchise to do business with the general public and instead attempts to assimilate the City's action here to a host of other governmental actions which might be deemed to "appl[y] coercive pressure" on a party to a labor dispute. Petr. Br. at 20. According to the second preemption theory, in enacting the NLRA Congress intended to preclude any "interference by state or local governments in labor disputes," *id.*; the States are absolutely precluded from "put[ing] a thumb on the scales of the balancing of power between labor and management," Br. of the National Labor Relations Board at 26 n.26. As we proceed to show, this theory is overbroad and misconceives the policies of the Act and the teaching of this Court's preemption decisions.

(a) Because petitioner and its *amici curiae* place such heavy reliance on the *Machinists* branch of the labor law preemption doctrine, we begin there. As the Court observed in *New York Tel. Co. v. New York Labor Dept.*, 440 U.S. 519, 530 (1979) (plurality opinion), the *Machinists* doctrine actually consists of "a pair of decisions": *Teamsters v. Morton*, 377 U.S. 252 (1964), and *Machinists v. Wisconsin Employment Rel. Comm'n*, 427 U.S. 132 (1976). What is most significant about those decisions, for present purposes, is that both arose in a context very different than the one to which petitioner's second theory is addressed: the context of what for want of a better term may fairly be called *direct state regulation of private conduct—viz.*, the establishment and enforcement of legal norms to govern private conduct.

Morton involved the application of the Ohio common law of secondary boycotts to a union's actions in "per-

suad[ing] the management . . . of the [struck employer's] customers to refrain from doing business with the [struck employer]." 377 U.S. at 255. Ohio proscribed this conduct—which "was permissible activity under federal law," *id.*—and required the union to pay damages to the employer for commiting this tort. This Court unanimously concluded that Ohio was precluded from maintaining and enforcing this rule of law. Writing for the Court Justice Stewart explained:

> [T]he [union's] request to [the secondary employer's] manageemnt to cease doing business with the [primary employer] was not proscribed by the Act. . . . This weapon of self-help, permitted by federal law, formed an integral part of the [union's] effort to achieve its bargaining goals during negotiations with the [employer]. Allowing its use is a part of the balance struck by Congress between the conflicting interests of the union, the employees, the employer and the communiy. If the Ohio law of secondary boycott can be applied to proscribe the same type of conduct which Congress focused upon but did not proscribe when it enacted [29 U.S.C.] § 303, the inevitable result would be to frustrate the congressional determination to leave this weapon of self-help available, and to upset the balance of power between labor and management expressed in our national labor policy. "For a state to impinge on the area of labor combat designed to be free is quite as much an obstruction of federal policy as if the state were to declare picketing free for purposes or by methods which the federal Act prohibits." [377 U.S. at 259-60; citations omitted.]

Machinists likewise arose in the context of direct state regulation of private conduct: in that case a union's concerted refusal to work overtime was deemed to be unlawful under a Wisconsin statute which prohibited "any concerted effort to interfere with production . . . except by leaving the premises in an orderly manner for the purpoes of going on strike." The Wisconsin Employment

Relations Commission issued a cease-and-desist order against the union's conduct. The Court again held the State's attempt to regulate a union's use of an economic weapon preempted because inconsistent with Congressional intent; the Court quoted the foregoing paragraph from *Morton* and added:

> To sanction state regulation of such economic pressure deemed by the federal Act "desirabl[y] . . . left for the free play of contending economic forces, . . . is not merely [to fill] a gay [by] outlaw[ing] what federal law fails to outlaw; it is denying one party to an economic contest a weapon that Congress meant him to have available." [427 U.S. at 150]

In sum, as this Court observed just last Term, *Morton* and *Machinists* rest on "the understanding that in providing in the NLRA a framework for self-organization and collective bargaining, Congress determined both how much the conduct of union and employers should be regulated, and how much it should be left unregulated." *Metropolitan Life Insurance Co. v. Massachusetts*, *supra*, 53 L.W. at 4623. And the point of the *Machinists* doctrine is to "proscribe[] state regulation and state law causes of action concerning conduct that Congress intended to be unregulated, conduct that was to remain a part of the self-help remedies left to the combatants in labor disputes." *Belknap Inc. v. Hale*, 463 U.S. 491, 499 (1983). *See also Operating Engineers v. Jones*, 460 U.S. 669, 676 n.8 (1983).

(b) As the instant case and No. 84-1484, *Wisconsin Department of Industrial, Labor and Human Relations v. Gould, Inc.* both illustrate, States act in a variety of capacities other than the capacity of regulator—of the maker and enforcer of legal norms. As we stated in our brief *amicus curiae* in *Gould*:

> States deliver goods and services; States purchase goods and service for their own use and for the use of their citizens; and States administer a variety of programs through which money or other benefits are distributed to individuals and businesses. [Br. of the AFL-CIO as *amicus curiae* in No. 84-1484 at p. 8]

Through these various activities, States develop economic relationships with individuals and with businesses which relationships are advantageous to the individuals and businesses involved. The question posed by the second preemption theory suggested in this case is whether the national labor policy requires a State to maintain all of these economic relationships with combatants to a labor dispute or whether, *per contra*, a State enjoys a measure of freedom to discontinue such relationships and to deny such advantages on account of a party's actions during a labor dispute.

As our discuisson of the *Machinists* doctrine makes clear, that is not a question that was posed in or decided by *Morton* or *Machinists*. Nor is it true that the rationale of those cases—that state regulation of economic weapons "upsets[s] the balance that Congress has struck between labor and management," p. 9, *supra*—can be extended to each and every state action which exerts economic pressure on a combatant in a labor dispute. The determination that direct state *regulation* would upset the congressionally-established balance rests on a specific finding that Congress intended to protect "the free play of economic forces" from such regulation. *Machinists*, 427 U.S. at 147. A rule that absolutely precluded any use of a state's economic leverage during a labor dispute likewise would be justified only if, in fact, Congress intended to disable the States from acting in response to a labor dispute by *participating* in the "free play of economic forces" and thereby intended to insulate the combatants from one potential economic consequence of engaging in economic warfare.

It is most unlikely that Congress intended so sweeping and absolute a rule. Such a rule would place extraordinary restrictions on the perogatives of the States—restric-

tions that Congress did not place even on private enterprises. And such a rule would not truly disengage the State from labor disputes but would involve the State on the side of the party with whom the State happened at the time to have an economic relationship.

The point is best made by considering further a hypothetical briefly suggested in our *amicus curiae* brief in *Gould*, based on the decision in *J.P. Stevens & Co. v. Mayor of Atlanta*, 85 Lab. Cases ¶ 10,980 (N.D. Ga. 1978). In the course of a labor dispute, a union urges consumers to boycott the products of a struck employer who is continuing production during the course of the strike by using persons hired to replace the striking workforce. The State must decide whether to continue to purchase the employer's struck goods.

The result suggested by the second preemption theory urged here is that the State must be oblivious to the labor dispute and is not free to abstain from doing business with the struck employer no matter how distasteful the State finds it to be engaged in a business relationship with that employer. Yet the States have a "sovereign interest in retaining freedom to decide how, with whom, and for whose benefit to deal," *Reeves Inc. v. Stake*, 447 U.S. 429, 438 n.10 (1980), an interest Congress is unlikely to have intended to override. Reading the NLRA to take away that freedom would be particularly anomalous in light of the fact that the Act preserves the right of every *other* trader to decide as a "matter of labor and business policy . . . to refuse to deal with another during a labor dispute," *Carpenters Union v. Labor Board*, 357 U.S. 93, 105 (1958); indeed, the very point of *Morton* is to uphold a union's right through peaceful means to attempt to persuade others not to do business with a struck employer. *See also Labor Board v. Servette*, 377 U.S. 46 (1964) (union acted lawfully in appealing to others to "mak[e] a business judgment to cease dealing with the primary employer").

Nor would a rule requiring the State to maintain its economic relationship with the struck employer succeed in removing the State's "thumb [from] the scales of the balancing of power between labor and management." P. 8, *supra*. Unlike the regulatory context—where the absence of regulation is not understood to lend state support to either side—the option of neutrality does not exist in this contect; if the State continues its economic relationship with the struck employer, the State advantages the employer at the expense of the union; if the State does not do so, the State's course of conduct has the opposite effect.

The short of the matter is that the logic of the *Machinists* rationale cannot be extended outside the context of direct regulation to instances in which a State is called upon to make economic judgments.[3] Nor is there any basis for concluding that Congress intended to disable the States from basing any economic judgment whatsoever on the existence of a labor dispute.

(c) This is not to say that the NLRA imposes no limits whatsoever on a State's ability to exert economic pressure on one side or the other to a labor dispute. This Court's decision in *Nash v. Florida Industrial Comm'n*, 389 U.S. 235 (1967)—holding that the State was preempted from denying unemployment compensation to an individual who filed an unfair labor practice charge with the NLRB challenging her discharge—teaches that some such limits do exist.

The purchasing hypothetical discussed above is a relatively easy one if only because the State there is acting like any other factor in the market and it is clear that

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[3] As we observed in our *amicus curiae* brief in *Gould*, this Court has, in other contexts, recognized a distinction between direct state regulation of private conduct and state efforts to affect private conduct through incentives and disincentives. *See, e.g., Regan v. Taxation With Representation of Wash.*, 461 U.S. 540, 549-50 (1983); *Maher v. Roe*, 432 U.S. 464 (1977).

all other factors are free to withhold their business from a struck employer—clear, in other words, that withholding business is an integral part of the free play of economic forces that Congress contemplated. Far more difficult questions would be posed if the State were to intervene in a labor dispute in ways more-or-less unique to government as by creating labor-related conditions of eligibility for participating in a state benefits program. For example, may a State disqualify striking employees from a State subsidy program for which the striker qualifies only because he is without income or employment due to the strike?[4] May a State disqualify a striking employee or his family from a subsidy program for which all other persons in the State are qualified or for which the striker would be eligible even if he were not on strike? What about subsidy programs for employers: for example, may a State which provides subsidies (or tax credits) to employers to train unskilled workers exclude from such a program a struck employer which seeks the subsidy to train permanent replacements for the strikers? May a State which subsidizes a particular business condition its continued subsidization on a wage freeze (or a wage increase)?[5]

It is not our purpose to attempt to answer these hypotheticals; the answers are not self-evident, and need not be determined in deciding *this* case. Our point is simply that there is no hard-and-fast rule that will resolve all such cases; as with other areas of labor law preemption, "[t]his penumbral area can be rendered progressively clearer only by the course of litigation," *Weber v. Anheuser-Busch, Inc.*, 348 U.S. 468, 480 (1955). And the decision in each case must turn upon an evaluation

[4] *Cf. Ohio Bureau of Employment Services v. Hodory*, 431 U.S. 471 (1977).

[5] *Cf. Amalgamated Transit Union v. Byrne*, 568 F.2d 1025 (3d Cir. 1977).

of the particular state action involved to determine whether that action is one Congress intended to leave open to the States.

That is the nature of the inquiry suggested by petitioner's first argument here which focuses on the impact of denying a franchise to do business with the general public on specific policies underlying the Act. *See* pp. ——, *supra*.[6] The Court's resolution of that argument will thus be dispositive here.

CONCLUSION

For the reasons stated in Part A, the writ of certiorari should be dismissed as improvidently granted.

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[6] That is also the type of inquiry all Members of this Court conducted in their opinions in *New York Tel. Co. v. New York Labor Dept., supra*, in considering whether the States are permitted to provide unemployment compensation to striking employees.

AMICUS CURIAE

BRIEF

No. 84-1644

IN THE
Supreme Court of the United States
OCTOBER TERM, 1984

GOLDEN STATE TRANSIT CORPORATION,
Petitioner,

v.

CITY OF LOS ANGELES,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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BRIEF AMICUS CURIAE OF THE NATIONAL INSTITUTE OF MUNICIPAL LAW OFFICERS

INTEREST OF THE AMICUS CURIAE

This brief *amicus curiae* is filed pursuant to Rule 36 on behalf of the 1,800 local governments that are members of the National Institute of Municipal Law Officers (NIMLO).

The state political subdivisions that are members of amicus operate NIMLO through their chief legal officers, variously called city attorney, county attorney, city or county solicitor, corporation counsel, or director of law. The respondent, City of Los Angeles, California, is a member of NIMLO. The accompanying brief is signed by the attorneys constituting the governing body of NIMLO,

both on behalf of NIMLO and on behalf of each of their cities.

The attorneys who operate NIMLO for their local governments are responsible for advising their governments' legislative bodies on the legal aspects of granting franchises such as the taxicab franchise at issue in the instant case. These attorneys also represent their governments in litigation resulting from the decision to grant or deny a franchise to a particular applicant. The assertion of the petitioner in this case is that local governing bodies do not have any authority to act upon a franchise application in certain circumstances. Here, this asserted lack of authority would require the continuation of a franchise regardless of whether the public interest would be served by that continuation. Adoption of such a position would obstruct the ability of local governments to meet the needs and safeguard the rights of their residents and visitors.

NIMLO believes that the opinion of the Ninth Circuit below properly concludes that the City was not preempted from refusing to renew petitioner's taxicab franchise, and thereby preserves the integrity of the franchise process. Consequently, NIMLO urges affirmance of the judgment entered in this case by the United States Court of Appeals for the Ninth Circuit.

Consent to the filing of this brief has been given by counsel for both parties. Copies of these letters of consent have been lodged with the Clerk of this Court.

STATEMENT OF THE CASE

The statement of the case as set forth in Respondent's Brief in Opposition to the petition for a writ of certiorari is adopted by the National Institute of Municipal Law Officers for purposes of this brief amicus curiae.

SUMMARY OF ARGUMENT

The process whereby local governments, including the City of Los Angeles here, issue franchises for the operation of public services is not one directed at the regulation of any aspect of labor relations. Because the franchise process protects the public welfare and does not, in itself, conflict with provisions of the National Labor Relations Act,[1] the process should not be burdened with independent, federally imposed concerns about labor-management relations.

In any dispute, including the labor dispute between petitioner and its employees, it is not unusual for the parties to make partisan and contentious statements. Where the dispute relates to a matter under consideration by a municipal governing body, some of these statements will almost inevitably be made during any open legislative forum on the matter. However, the freedom to express a partisan viewpoint is a recognized attribute of our system of government that should not be endangered by the threat of invalidation of government action taken subsequent to public partisan statements. It is the responsibility of local governing bodies to act in matters of public concern, and to impute improper legislative motives based on selected public comments would threaten the exercise of constitutional rights and would establish an unfortunate precedent of judicial oversight.

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[1]As amended, 29 U.S.C. §141 *et seq.*

ARGUMENT

I. THE FRANCHISING PROCESS APPLIED BY THE CITY OF LOS ANGELES TO TAXICAB BUSINESSES DOES NOT TEND TO OPERATE SO AS TO FRUSTRATE FEDERAL LABOR POLICY.

The Los Angeles franchise process involved in the instant case does not constitute an attempt by the City to regulate any aspect of labor-management relations; nor can petitioner claim that the NLRB has jurisdiction over the issuance of local franchises. Rather, a Los Angeles taxicab franchise directly relates to the use of public ways and allows a private person to perform a function in furtherance of the public welfare. The franchise remains subject to public control and, at the end of the franchise period, the City can refuse to renew the franchise.

In acting on a franchise application, the City is not necessarily trying to compel any specific agreement between parties to a labor controversy. The grant or denial of a franchise application is, in the context of NLRA applicability, a facially neutral action by an entity not party to a labor dispute. In a hypothetical case of nonrenewal of a public service franchise, the predictable result of nonrenewal is the termination of not only a person's operating franchise, but of the jobs dependent on the franchise, as well. Therefore, nonrenewal could be expected to have a negative effect on the economic strength of both the franchisee and its employees.

Generally, then, in the franchising process, only circumstances beyond the grantor's reach may make the franchise decision one that arguably benefits one or the other party to a labor dispute. Petitioner in the instant case, however, is asking the federal courts to apply federal labor

law in such a way that a local government would be required to make a finding of actual labor-management neutrality before it could fulfill its function as a public service franchisor. Such a result would be antithetical to our federalism system of government, and cannot reasonably have been intended by Congress in passing the National Labor Relations Act. [2]

The franchise process does not, on its face, conflict with rights ensured by the NLRA and must be independent of artificial constraints posed by labor-management controversies to which the municipal grantor is not a party. Here, extensions to its franchise gave petitioner five months beyond the original franchise expiration date, and an unspecified number of months beyond the time when contract negotiations actually began, to resolve its labor problems. Petitioner now argues that the mere continuation of a labor dispute in itself mandates the indefinite extension of a public service franchise.[3]

Such a contention ignores the nature of the franchising mechanism, however. Once accepted, a franchise grants a vested property right.[4] The consideration given for the grant is the benefit which the public derives from the use

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[2] *See Brown v. Hotel & Restaurant Employees & Bartenders,* 104 S. Ct. 3179, 3189 (1984) (quoting *DeVeau v. Braisted,* 363 U.S. 144, 153 (1960): "Would Congress, with a lively regard for its own federal labor policy, find in this state enactment a true, real frustration, however dialectically plausible, of that policy?").

[3] Obviously, under this theory, any time a franchisee fears the nonrenewal of its franchise — for any reason — management and its employees could at least preserve the status quo by agreeing to disagree about contract terms. Simply the possibility of eventual resort to an economic weapon in an ongoing labor dispute may be enough, under petitioner's approach, to preclude the local government from acting on the pending renewal.

[4] *See Owensbow v. Cumberland Telephone Co.,* 230 U.S. 58 (1912).

and exercise of the franchise.[5] The contractual nature of a franchise requires that when proper service cannot be assured for the public, whether because of an ongoing labor dispute or nonperformance in some other respect, the municipal grantor is free to exercise its contract rights, including the nonrenewal of an expired franchise.

The importance and public benefit of utilizing the franchising process to ensure courteous taxicab service and fair rates, and thereby meet urban mass transit needs, is recognized.[6] As a matter of neutral public policy, then, the municipal grantor may have an independent interest in an operating company's labor peace. Clearly there must be some leeway for protecting the public from suffering the effects of a long-term labor dispute in a public service industry. Here, the City of Los Angeles met any burden it had as the franchisor by granting extensions to Golden State Transit and allowing for a reasonable time in which to settle its labor dispute so that its franchise commitments could be assured.

II. INVALIDATING THE DECISION OF NONRENEWAL BASED ON THE ALLEGED EFFECT OF DISCUSSION DURING CITY COUNCIL HEARINGS OF PETITIONER'S LABOR DISPUTE WOULD CHILL THE FIRST AMENDMENT RIGHTS OF PRIVATE PARTICIPANTS AND WOULD NECESSITATE UNWARRANTED INQUIRY INTO LEGISLATIVE MOTIVES.

The nature of city council hearings under open meetings requirements is such that all points of view are entitled to be heard. While the city cannot, and should not, control

[5] *Bessemer v. Birmingham Electric Co.*, 248 Ala. 345, 27 So.2d 565 (1946).

[6] *See Airport Taxi Cab Advisory Comm. v. City of Atlanta*, 584 F.Supp. 961, 966-67 (N.D. Ga. 1983).

what a private citizen may say during an open forum, the city's authority to take action on an item under consideration similarly should not be affected because a private citizen has exercised his or her right to speak. Yet, petitioner, in effect, wants to force the renewal of its operating franchise based upon the content of protected remarks made by union members during council meetings. Apparently, petitioner would condition legislative authority to decide on a franchise application in such circumstances on all parties to a dispute remaining silent in public. Not only would such a condition obviously be unconstitutional, it would be unrealistic. In any dispute, neutrality cannot be expected from the parties; many things may be said and many threats may be made. But in a case such as this, where a private dispute by necessity reaches a public forum, responsibility for resolving the dispute lies with the parties, while responsibility for making an informed decision concerning the public welfare lies with the city's legislative body.

As in areas of municipal action affecting constitutionally protected activities,[7] an inquiry into the motives or purposes of the legislative body in acting upon a franchise application would be a hazardous undertaking, at best. In part, whether or not true in the instant case, this is because the decision may be based on factors not included in the record. In any event, the claimed effect of destroying Golden State Transit's economic ability to resist a strike should not be permitted by this Court to be equated with an assumed purpose to assist one side in a labor dispute.

[7] *United States v. O'Brien*, 391 U.S. 367, 383 (1968).

CONCLUSION

Both the renewal — here, against the City's better judgment — and the nonrenewal of a franchise could be said, in similar circumstances, to alter the economic pressure on one or the other party to a labor dispute. Therefore, the City Council must be free to make its own determination, based on legitimate concerns, of what action best serves the public interest. If the Council's view of the public interest is in error, the appropriate remedy is the operation of the political process.

Because the effect of this decision would be limited to those public service areas directly implicating the interests of the general population, the National Institute of Municipal Law Officers respectfully urges this Court to affirm the Ninth Circuit's decision below.

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AMICUS CURIAE

BRIEF

No. 84-1644

IN THE
Supreme Court of the United States
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GOLDEN STATE TRANSIT CORPORATION,
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CITY OF LOS ANGELES,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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BRIEF OF THE NATIONAL LEAGUE OF CITIES, U.S. CONFERENCE OF MAYORS, NATIONAL ASSOCIATION OF COUNTIES, NATIONAL CONFERENCE OF STATE LEGISLATURES, AND NATIONAL GOVERNORS' ASSOCIATION AS *AMICI CURIAE* IN SUPPORT OF RESPONDENT

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QUESTION PRESENTED

Whether federal labor law preempts a municipality's decision, in furtherance of its transportation policy, not to renew a taxicab company franchise that expired during a strike by the company's employees.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

No. 84-1644

GOLDEN STATE TRANSIT CORPORATION,
Petitioner,

v.

CITY OF LOS ANGELES,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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BRIEF OF THE NATIONAL LEAGUE OF CITIES, U.S. CONFERENCE OF MAYORS, NATIONAL ASSOCIATION OF COUNTIES, NATIONAL CONFERENCE OF STATE LEGISLATURES, AND NATIONAL GOVERNORS' ASSOCIATION AS *AMICI CURIAE* IN SUPPORT OF RESPONDENT

INTEREST OF *AMICI CURIAE*

Amici are organizations whose members include state, county, and municipal governments and officials located throughout the United States. *Amici* and their members, therefore, have a vital interest in the legal issues that affect the powers and responsibilities of state and local government.

At issue in this case is whether a routine governmental decision, which a municipality is called upon to make during a labor dispute, is invalid under federal labor law because of its incidental effect on the bargaining strength of one of the parties to the dispute. *Amici* and their members constantly must make licensing and contracting decisions that may indirectly affect employers or unions when they are involved in collective bargaining. It is therefore critically important to *amici* that this Court adopt clear standards for determining when such decisions are preempted as a matter of federal labor law.

It is equally important to *amici* that the Court adopt a legal standard for determining preemption that respects the ability of, and need for, state and local officials to exercise their police powers in the public interest, even though their actions may have an incidental effect on the bargaining strength of an employer or union. Unless this Court holds that state and local governments are free to make governmental decisions without interference by federal labor law if they act with a legitimate justification that advances a neutral public policy, this case will have a direct, immediate, and adverse effect on matters of compelling importance to *amici* and their members. *Amici* therefore submit this brief to assist the Court in its resolution of this case.[1]

STATEMENT

Petitioner formerly held a franchise to operate taxicabs within the City of Los Angeles pursuant to approval by the City Council under municipal law. L.A. Munic. Code § 71.12(b). On March 31, 1980, petitioner filed with the City an application for a five-year renewal of its existing franchise which was scheduled to expire on October 29, 1980. J.A. 24. The date was extended twice, to March 31, 1981, so that the City could consider the request. J.A. 33. The application, recommended for approval in a report by the Department of Transportation, was reviewed by the Board of Transportation Commissioners and the Transportation and Traffic Committee of the City Council. Both summarily recommended renewal of the franchise for five years. Neither made any specific findings in their recommendations concerning the need for petitioner's fleet of cabs in light of the City's overall transportation policy. *Id.* at 33-34, 36-43.

In October 1980, the collective bargaining agreement between petitioner and the Teamsters Union, which represented petitioner's employees, expired. A short-term agreement between the parties was reached but expired on February 10, 1981; and the union went on strike on February 11, 1981. J.A. 9; Pet. App. 2a.

On the same day, petitioner's application for franchise renewal was scheduled for final consideration by the City Council. The City Council voted unanimously to postpone consideration of the renewal of petitioner's franchise, which was then due to expire on March 31, 1981. Pet. App. 2a. During that time, petitioner had full legal authority to operate its taxicabs within the City, but did not hire strike replacements and thus had no taxicabs on the streets. Petitioner's franchise renewal again came up for consideration on March 23, 1981. After public hearings and debate, the City Council voted twelve-to-one not to renew petitioner's franchise because, during the period when petitioner was not operating, it became apparent that the taxicabs in petitioner's fleet were not necessary to provide adequate and economic service to the community. Pet. App. 2a-3a. *See* pp. 23-25, 27, *infra*.[2]

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[1] Pursuant to Rule 36 of the Rules of this Court, the parties have consented to the filing of this brief. The parties' letters of consent have been filed with the Clerk of the Court.

[2] The Chairman of the Transportation and Traffic Committee of the City Council filed a motion before the Council to extend petitioner's franchise for 30 days. J.A. 10. Without the extension, the franchise would have expired on March 31st. Petitioner never-

Petitioner then filed this lawsuit in the United States District Court for the Central District of California, alleging, *inter alia*, that the refusal to renew petitioner's franchise conflicted with the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.*, and therefore was preempted under the Supremacy Clause of the United States Constitution. J.A. 1-12. The district court granted petitioner's request for a preliminary injunction. Pet. App. 26a-32a. The court found that the "City Council's refusal to renew [petitioner's] taxicab franchise was based solely on the grounds that plaintiff's union drivers were on strike." *Id.* at 30a. Characterizing it as an impermissible interference with petitioner's ability to use its "economic strength" to weather the union's strike, the Court concluded that the City's action was inconsistent with federal labor law and therefore preempted. *Id.* at 32a.

The court of appeals reversed. Pet. App. 18a-25a. On the preemption issue, the court first held that any judicial inquiry into the motive of the City Council in not renewing petitioner's franchise was inappropriate. *Id.* at 20a. Next, it held that the adverse effect of the City's decision on petitioner's bargaining power did not require preemption because the City's underlying decision involving the use of public streets was a matter "deeply rooted in local feeling and responsibility" and therefore fell within an exception to preemption recognized by this Court. *Id.* at 21a, quoting *San Diego Building Trades Council v. Garmon*, 359 U.S. 236, 244 (1959).

On remand, the district court granted the City's motion for summary judgment. Pet. App. 12a-17a.[3] The

theless remained free after that date to renew its application, but it would have had to demonstrate again to the relevant administrative and legislative decisionmakers that the proposed service was in the best interest of the City, which presumably would require at least a showing of need for additional taxicabs.

[3] After remand, petitioner amended its complaint to add a charge that the City had violated Section 1 of the Sherman Act, 15 U.S.C. § 1. The district court granted partial summary judgment for the

district court made findings regarding the March 23, 1981, hearing before the City Council when petitioner's franchise was not renewed. It found that the General Manager of the City's Department of Transportation had informed the Council that, before the strike by petitioner's employees, there had been "too many taxicabs operating in the City" and that "since the strike he had received no complaints about the adequacy of service." *Id.* at 16a. The court found that at least one member of the Council commented that denial of petitioner's franchise would encourage a healthier taxicab industry. *Ibid.* The court then held that "[t]he National Labor Relations Act does not preempt the City's franchise renewal power." *Id.* at 17a.

The court of appeals affirmed. Pet. App. 1a-10a. The court, however, disavowed the analysis in its previous opinion vacating the preliminary injunction; the court concluded that the "local interest" exception to federal labor law preemption, relied upon earlier, was inapplicable to this case. Instead, the court held that there was no real conflict between the City's action and the purposes of federal law because nothing in the record demonstrated that the City's franchise decision "was not concerned with transportation." *Id.* at 7a. Alternatively, the Court held that, even if the City did condition franchise renewal upon settlement of the labor dispute, this action would not be preempted because the City did not attempt to dictate the particular terms of the agreement. *Id.* at 7a-8a. Accordingly, the court of appeals held that the City's decision was not preempted.[4]

City on this claim, on the basis of the state action exemption doctrine announced in *Parker v. Brown*, 317 U.S. 341 (1943); and the court of appeals affirmed. *Golden State Transit Corp. v. City of Los Angeles*, 726 F.2d 1430 (9th Cir. 1984).

[4] Judge Norris concurred separately. Pet. App. 9a-10a. He concluded, *inter alia*, that the entry of summary judgment against petitioner was appropriate because it had failed to cite any evidence creating a factual issue for trial that the City's *purpose* was to assist the union. *Id.* at 10a.

SUMMARY OF ARGUMENT

A. This case arises in a relatively uncharted area of labor law where the federal interest is minimal and the state and local interests are significant. This case does not involve an attempt by a state or local government to regulate *directly* activities even arguably protected or prohibited under the NLRA. *San Diego Building Trades Council v. Garmon*, 359 U.S. 236 (1959). Nor does this case implicate the line of decisions in which preemption is warranted because a state or local government is *directly* regulating labor-management activities that are *permitted* under federal law and thus immune from direct state and local interference. *Lodge 76, Machinists v. Wisconsin Employment Relations Comm'n*, 427 U.S. 132 (1976). Instead, this is a case in which the local government has pursued a legitimate police power purpose—sound transportation policy—which is neutral regarding labor relations and which has only an *indirect* effect on a labor dispute. *New York Telephone Co. v. New York Department of Labor*, 440 U.S. 519 (1979). Moreover, the transportation policy decision by the City—whether to renew petitioner's franchise to operate—was "thrust upon" the City during the course of a strike. The City had to make a decision, and *any* decision that it made might have affected one of the parties to the labor dispute.

In such "indirect effects" cases, where neither prohibited/protected nor permitted activities are being directly regulated, state or local action is not preempted by federal labor law if it reasonably furthers a legitimate governmental policy that is neutral regarding labor relations unless the employer or union can show that the purpose of the governmental decision was to interfere directly with a collective bargaining dispute. Such a test in indirect effects cases properly balances the weak federal interest and the strong state and local interests.

B. Not only is this legal standard appropriate under the Court's decisions, it is the only test that reasonably

accommodates the state's legitimate right to make public policy decisions that merely "touch" labor relations. *Metropolitan Life Insurance Co. v. Massachusetts*, —— U.S. ——, ——, 105 S.Ct. 2380, 2398 (1985). It is wholly unwarranted, and certainly not consistent with Congress' intent, to adopt an "effects" test. Myriad state and local governmental actions may affect labor relations, but so long as they also serve a neutral governmental purpose, they are constitutional because Congress did not occupy the entire field of labor relations.

It would also be unwarranted to adopt a legal standard that employs, in whole or in part, an element of subjective intent. While analysis of objectively identifiable legislative purpose is, of course, appropriate in this context, judicial inquiries into the mental state of public officials are both unseemly and hazardous, *United States v. O'Brien*, 391 U.S. 367, 383 (1968), and this Court ordinarily is loath to sanction such an approach. *Personnel Administrator of Massachusetts v. Feeney*, 442 U.S. 256, 279 (1979). There is no reason to deviate from the presumption against such an inquiry in this case.

The "urgent relationship" test, proposed by the National Labor Relations Board (NLRB), would require states and localities to demonstrate to a court that their actions indirectly affecting labor relations are justified by an "urgent relationship" to a legitimate state interest. That test is also unsatisfactory. First, it is completely opaque; it gives state and local governments absolutely no guidance as to when their actions taken to further a neutral governmental policy are permissible under federal labor law. Second, it is fundamentally at odds with the basic rule that a state or local government decision is presumed valid and should be upheld unless it clearly conflicts with federal law or policy. *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142 (1963).

C. Under *amici*'s proposed test, the City's action is not preempted. The City Council denied petitioner's fran-

chise after receiving evidence, based on the approximately 40 days that petitioner was not operating its taxicab fleet, that the service was not needed and that denial would benefit the economic health of the industry. Petitioner has cited no record evidence that the City Council acted with an improper purpose when it denied petitioner's franchise application. In fact, the evidence is clear that the City wished to remain neutral. Moreover, the ultimate result of the City's action benefited neither side to the labor dispute—the company went out of business, the drivers lost their union jobs, and the union lost its status as bargaining representative. Under these circumstances, preemption is not warranted.

ARGUMENT

THE DECISION OF THE CITY COUNCIL NOT TO RENEW PETITIONER'S TAXICAB FRANCHISE IS NOT PREEMPTED BY THE NATIONAL LABOR RELATIONS ACT.

The decision of the court of appeals, upholding the action of the City Council on petitioner's franchise application, correctly recognized that the actions of state and local governments, particularly those which are thrust upon them by applications for licenses or contracts by private entities, may affect the relative economic strengths of parties to a collective bargaining dispute, but that not all, or even most, of those decisions are invalid under the National Labor Relations Act.[5] Pet. App. 7a; *Garner v. Teamsters*, 346 U.S. 485, 488 (1953); *Linn v. United Plant Guard Workers*, 383 U.S. 53, 59 (1966);

[5] *Amici* do not rely on the statement of the Ninth Circuit that state and local governments may interfere directly with a collective bargaining dispute so long as they do not dictate the outcome of that dispute. We support only the earlier statement in the majority appellate opinion that the City Council's action was valid because it was taken to further transportation policy. This statement is fully supported by the record and is adequate to support affirmance of the judgment below under the legal standard proposed by *amici*.

Belknap, Inc. v. Hale, 463 U.S. 491, 499-501 (1983). *Amici* submit that the appropriate legal test for determining when state and local actions in "indirect effects" situations are preempted is whether the decision of the state or local government reasonably furthers a legitimate governmental purpose and does not directly regulate labor relations. Under this test, the action is not preempted unless the affected party can carry the burden of showing by objective evidence that the purpose of the final decision was to affect the collective bargaining process.

In support of this legal theory, *amici* will first demonstrate that their proposed rule is fully consistent with the prior decisions of this Court and, indeed, is arguably compelled by them. Subsequently, we will argue that the proposed rule provides a better accommodation of the federalism interests implicated in this type of preemption case than any other rule and that the proposed rule is "capable of relatively easy application, so that lower courts may largely police themselves in this regard." *Amalgamated Ass'n of Street, Electric Railway & Motor Coach Employees v. Lockridge*, 403 U.S. 274, 290 (1971). Finally, *amici* will show that under their proposed standard, there are no disputed issues of fact regarding the action of the City Council that would require any additional proceedings, and therefore the judgment below should be affirmed.

A. Under This Court's Preemption Decisions, Governmental Actions That Further Neutral Public Purposes Are Not Preempted Simply Because They Indirectly Affect A Labor Dispute.

In order to determine the proper legal standard for assessing the constitutionality of the franchise renewal decision by the Los Angeles City Council, it is necessary first to place this case within the labor preemption framework created by the Court's previous decisions. Without question, the vast majority of the Court's past labor pre-

emption decisions are of little relevance to this case because they concerned attempts by state or local governments to regulate directly activities that were either at least arguably protected by Section 7 of the National Labor Relations Act, 29 U.S.C. § 157, or arguably prohibited by Section 8 of the Act, 29 U.S.C. § 158. *See, e.g., Weber v. Anheuser-Busch, Inc.*, 348 U.S. 468 (1955); *Garner v. Teamsters*, 346 U.S. 485 (1953); *Hill v. Florida ex rel. Watson*, 325 U.S. 538 (1945); *Local 207, Iron Workers v. Perko*, 373 U.S. 701 (1963); *Local 100 of United Ass'n of Journeymen v. Borden*, 373 U.S. 690 (1963); *Marine Engineers v. Interlake S.S. Co.*, 370 U.S. 173 (1962).

In such cases, which have been labeled "*Garmon* preemption cases," the Court decides whether the local regulation would unduly interfere with the NLRB's primary regulatory authority over labor relations. *See San Diego Building Trades Council v. Garmon*, 359 U.S. 236 (1959).[6] Petitioner correctly acknowledges that this case does not fall within the primary jurisdiction branch of the labor preemption doctrine. Pet. Br. 11 n.11, 28-30. The conduct at issue here is not even arguably subject to regulation by the NLRB.

In a much smaller number of cases, now labeled "*Machinists* preemption cases," this Court has reviewed state and local actions directly regulating labor activities which were neither arguably protected nor prohibited by the

[6] When the state or locality regulates matters within the Board's jurisdiction, then its efforts ordinarily have been struck down. *Local 926, Int'l Union of Operating Eng'rs v. Jones*, 460 U.S. 669, 684 (1983); *Farmer v. United Brotherhood of Carpenters, Local 25*, 430 U.S. 290, 305-307 (1977). If, however, the state or local government attempts to protect non-labor-related interests, the Court has balanced those interests against the likelihood of a conflict with the Board's administration of the NLRA, and often the state or local action has been upheld. *Belknap, Inc. v. Hale*, 463 U.S. 491 (1983); *Sears, Roebuck & Co. v. Carpenters*, 436 U.S. 180 (1978); *Linn v. United Plant Guard Workers*, 383 U.S. 53 (1966).

NLRA, but which were instead "permitted" activities that Congress intended to leave unregulated by the Board, and, by implication, by state and local governments. *Lodge 76, Machinists v. Wisconsin Employment Relations Comm'n*, 427 U.S. 132 (1976). In *Local 20, Teamsters v. Morton*, 377 U.S. 252 (1964), the Court reversed an award of damages for injuries to an employer's business caused by a union's secondary boycott activities that Ohio had declared illegal. Congress had deliberately omitted the specific union activities there challenged when it enacted a limited ban on secondary boycotts in Section 303 of the Labor-Management Relations Act of 1947, 29 U.S.C. § 187. This Court held that Congress' limited prohibition evinced a clear intent to permit the union to engage in such activity as part of its economic arsenal in the collective bargaining dispute. The Court explained that to permit the State of Ohio to award damages resulting from the federally permitted activity would completely frustrate Congress' objective. 377 U.S. at 260.

Subsequently, the Court broadened this doctrine in *Lodge 76, Machinists v. Wisconsin Employment Relations Comm'n*, 427 U.S. 132 (1976). The Court held that an order of a state labor commission enjoining an employee from refusing to work overtime as a means of attempting to coerce the employer to enter into a collective bargaining agreement with the union was preempted by the NLRA. Unlike *Morton*, there was no explicit indication that Congress intended to permit this particular activity to be unrestrained. The Court nevertheless inferred from the statutory scheme that Congress intended "to leave some activities unregulated and to be controlled by the free play of economic forces." 427 U.S. at 144. The Court held that the union's reliance upon this self-help mechanism fell within the powers that Congress meant to leave free from direct control by both the NLRB and state governments, and therefore the injunction prohibiting the employees' actions "would frustrate effective im-

plementation of the Act's processes." 427 U.S. at 148, quoting *Railroad Trainmen v. Jacksonville Terminal Co.*, 394 U.S. 369, 380 (1969).

Significantly, both *Morton* and *Machinists* involved *direct* efforts by the states to regulate labor activities. Consequently, neither case held that every state and local action that might indirectly or incidentally affect the collective bargaining process was preempted. To the contrary, the pivotal concurring opinion by Justice Powell in *Machinists*, joined by the Chief Justice, indicated clearly that the opinion of the Court stated a narrow rule of implied preemption. Federal labor law does not "preclude the States from enforcing, in the context of a labor dispute, 'neutral' state statutes or rules of decision: state laws that are not directed toward altering the bargaining positions of employers or unions but which may have an incidental effect on relative bargaining strength." 427 U.S. at 156. Justice Powell explained that "[e]xcept where Congress has specifically provided otherwise, the States generally should remain free to enforce . . . laws reflecting neutral public policy." *Ibid.* *See* Cox, *Labor Law Preemption Revisited*, 85 Harv. L. Rev. 1337, 1355-1356 (1972).

The Court subsequently has followed the basic approach set out in Justice Powell's concurrence, distinguishing between state and local efforts to regulate labor relations directly, and state and local actions with a governmental purpose neutral as to labor relations that only indirectly affect permitted collective bargaining tactics. The leading case in this third area of labor preemption, which involves indirect effects on permitted activity, is *New York Telephone Co. v. New York Department of Labor*, 440 U.S. 519 (1979). There, the Court upheld the constitutionality of a state statute extending to strikers unemployment compensation which was paid for, in part, by the employer. The plurality opinion, written by Justice Stevens, recognized at the outset that "the cases comprising the main body of labor pre-emption law are of little relevance in deciding this case." 440 U.S. at 529-520.

The plurality further noted that neither *Machinists* nor *Morton* was relevant to the dispute because, in contrast to those decisions, the unemployment compensation statute "does not involve any attempt by the State to regulate or prohibit private conduct in the labor-management field." 440 U.S. at 532. Instead, the plurality viewed the law as "a state program for the distribution of benefits to certain members of the public," and not as one with the purpose to benefit either of the parties involved in collective bargaining. *Ibid.*

The plurality reasoned that when the state government acts pursuant to a law that does not regulate "the relations between employees, their unions, and their employer," then it is "difficult" to infer an intent by Congress to preempt state and local initiatives. *Id.* at 533. The plurality relied heavily on the "public purpose" of New York's law—to provide financial protection to residents of the state who were no longer working—which undermined the employer's claim that the law impermissibly interfered with federal labor policy. 440 U.S. at 529, 532, 534. Accordingly, in the absence of any evidence of an express intent by Congress to preempt, the plurality concluded that the state unemployment compensation law was constitutional.[7]

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[7] None of the opinions in *New York Telephone* disagreed with the basic point of Justice Stevens' opinion, that neutral laws could be validly applied by state and local governments even in the context of a collective bargaining dispute. Instead, the divergence of opinion among the justices centered upon whether the provision of unemployment compensation for strikers that is financed by the employer could properly be viewed as an act with a neutral purpose. 440 U.S. at 546 n.* (Brennan, J., concurring); *id.* at 549 (Blackmun, J., concurring); *id.* at 551 (Powell, J., dissenting). Because these justices concluded that the unemployment compensation

The Court since *New York Telephone* has declined in indirect effects cases to interfere with legitimate state and local prerogatives because no substantial federal interest required state law to be preempted. In *Belknap, Inc. v. Hale*, 463 U.S. at 500, which held that contract claims by strike replacements who were discharged by the employer after the strike ended were not preempted under *Machinists*, the Court explained why neutral laws or rules of decision that may limit a party's "economic weapons" are nevertheless not preempted:

> It is one thing to hold that the federal law intended to leave the employer and the union free to use their economic weapons against one another, but is quite another to hold that either the employer or the union is also free to injure innocent third parties without regard to the normal rules of law governing those relationships. We cannot agree with the dissent that Congress intended such a lawless regime.

Similarly, last term, in *Metropolitan Life Insurance Co. v. Massachusetts*, —— U.S. ——, 105 S.Ct. 2380 (1985), the Court upheld state laws mandating benefits in health insurance plans against a preemption challenge under the NLRA, even though the law limited the ability of unions and employers to bargain about the contents of a proposed insurance plan. The Court again rejected the broad suggestion that any state regulation that touches collective bargaining is preempted; instead, it reasoned that "Congress developed the framework for . . . collective bargaining . . . within the larger body of state law promoting public health and safety." *Id.* at 2398.

Thus, this Court has made clear that, in indirect effects cases, state and local governments are not disabled by a

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scheme directly and intentionally altered the collective bargaining process, they concluded that it must be preempted, unless Congress expressed its intent not to preempt the state unemployment compensation scheme. The concurring justices found that such intent clearly existed in the history of the NLRA and the Social Security Act of 1935, 49 Stat. 639, and the dissenters did not.

labor dispute from protecting their legitimate public policy interests simply because the governmental action may indirectly affect such a dispute. *See New York Telephone, Belknap, Inc.*, and *Metropolitan Life*.[8] *Amici*'s proposed test implements these decisions. If the state or local governmental action reasonably furthers a neutral governmental policy, the test ensures that such action ordinarily will be protected. On the other hand, if the union or the employer can show that the state or local government had the purpose of affecting the collective bargaining process, the test protects the federal interest in ensuring that states and localities do not interfere with a labor dispute. Of course, there is no reason to assume that state and local officials will abandon their duty to serve the public interest and act instead simply to prejudice one of the parties to a collective bargaining dispute.

If *amici*'s test is not adopted, nearly every decision that a state or local government may be called upon to make during the course of a strike will be subject to review and second-guessing by a federal court. *Amici*'s test is fully consistent with this Court's decisions, under which state and local actions that affect labor relations only indirectly are not preempted.[9]

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[8] The NLRB asserts (Br. 19) that, under the Court's decision in *Machinists*, any municipal action that affects the collective bargaining power of one of the parties to a labor dispute is preempted unless Congress expressly evinced its intent to approve the state or local governmental action. This argument is inconsistent with *Belknap, Inc.*, in which there was no express congressional intent to permit strike replacements to bring breach of contract actions, and the state's allowance of such actions impaired the employer's ability to weather a strike.

[9] The only federal interest in an "indirect effects" preemption case is to allow relatively unrestrained collective bargaining. This Court already has held in *Belknap, Inc., supra*, and *Metropolitan Life, supra*, that this interest is clearly not sufficient to warrant preemption when the state or local action unquestionably furthers a neutral public purpose. The federal interest does not become any

B. Alternative Tests In "Indirect Effects" Cases Do Not Properly Balance State And Local Prerogatives Against Federal Interests.

Not only is *amici*'s proposed rule consistent with this Court's prior decisions, it is the only approach that properly balances the interests implicated in labor preemption cases. There are three alternative proposals for determining preemption in a case such as this—a pure "effects" test, a subjective intent test, and the "urgent relationship" test proposed by the NLRB. None of these approaches gives adequate recognition to state and local prerogatives. Each therefore interferes with the legitimate exercise of police powers by state and local governments in ways that Congress did not intend.

1. At times, petitioner appears to argue (*e.g.*, Pet. Br. 16) for application of an "effects" test, asserting that the employer has a right to bargain free from the coercive effects of the City's franchising decision. But, as Professor Cox has correctly stated, "[i]t is obviously too loose to assert that federal law excludes any state law that affects the balance of interests among management, union, employees, and public in union organization and collective bargaining." Cox, *Labor Law Preemption Revisited*, 85 Harv. L. Rev. 1337, 1355 (1972). *See New York Telephone Co. v. New York Department of Labor*, 440 U.S. at 533 (plurality opinion); *Metropolitan Life Insurance Co. v. Massachusetts*, 105 S.Ct. at 2398 ("federal labor law in this sense is interstitial, supplementing state law where compatible"); *Machinists v. Wisconsin Employment Relations Comm'n*, 427 U.S. at 156 (Powell,

more substantial simply because the state or locality may harbor a second purpose to encourage the parties to reach a collective bargaining agreement. Nothing in the NLRA indicates that it was intended as a mechanism for policing the purity of state and local decisions in this third area of labor preemption, so long as those decisions advance important governmental purposes.

J., concurring); Cox, *Recent Developments In Labor Law*, 41 Ohio St. L.J. 277, 293 (1980).[10]

An effects test is grossly overinclusive. As *amicus* Chamber of Commerce points out (Br. 19), it would be completely inappropriate to declare illegal a City's determination not to renew a franchise for "failure to abide by the terms of [the company's] prior franchise" simply "because the City's action might affect the outcome of [a labor] dispute."[11] In terms of the potential effect of the City's action on collective bargaining, the hypothetical is indistinguishable from this case. Without regard to the reason for nonrenewal, an employer's ability to weather the strike is affected to the same extent.[12]

What makes an effects test completely inappropriate as applied to decisions that a state or local government must make during the course of a labor dispute, is that, no matter what the decision, it will likely affect the comparative bargaining muscle of the parties to the dispute. Thus, if the City had renewed petitioner's franchise, then the union might have been disadvantaged in its legitimate effort to use a strike to coerce petitioner to reach an agreement. Renewal of the franchise would have made it possible for petitioner to operate by hiring strike replace-

[10] The legislative history of the Taft-Hartley Act makes clear that Congress did not occupy the entire field of labor relations. *See* S. Rep. No. 105, 79th Cong., 2d Sess. 26 (1947); H.R. Rep. No. 510, 79th Cong., 2d Sess. 52 (1947).

[11] In this case, petitioner's franchise required it to provide transportation service by operating at least 300 vehicles and not to suspend or abandon such service without authorization. J.A. 92-93.

[12] Moreover, the Chamber of Commerce correctly concedes (Br. 19) that a municipality is not obliged to sit idly by and allow a private strike to interfere with the City's ability to make decisions regarding necessary services. The Chamber of Commerce fails to explain, however, why the City should suddenly be disabled, solely because there is a labor dispute, from making a determination to deny a franchise that was no longer necessary to provide economic and efficient taxicab service to the City.

ments, assuming that any were available. On the other hand, the City Council's decision here to deny the renewal is challenged on the basis that it impaired the employer's ability to weather the strike.

The dilemma facing government officials who must make decisions during a strike requires the rejection of a pure effects test. Governmental licensing and contracting decisions cannot become illegal solely because they were made during a labor dispute and may indirectly affect it. *See Massachusetts Nursing Ass'n v. Dukakis*, 726 F.2d 41, 43 (1st Cir. 1984); *Amalgamated Transit Union, Div. 819 v. Byrne*, 568 F.2d 1025, 1029 (3d Cir. 1977) (en banc). Instead, municipalities must be free to make basic governmental decisions notwithstanding the existence of a labor dispute if such decisions are reasonably related to neutral policies.[13]

2. It would be equally inappropriate for the Court to adopt a subjective intent test as petitioner also seems to suggest. Pet. Br. 43. As this Court has recognized, judicial inquiry directly into legislative motive is "unsatisfactory" and "hazardous" as the basis for invalidating facially constitutional actions. *Pacific Gas & Electric Co. v. State Energy Resources Conservation & Development Comm'n*, 461 U.S. 190, 216 (1983); *United States v. O'Brien*, 391 U.S. 367, 383 (1968). As the Court has explained, "[w]hat motivates one legislator to make a speech about a statute is not necessarily what motivates scores of others to enact it, and the stakes are sufficiently high for us to eschew guesswork." *O'Brien*, 391 U.S. at 384. Thus, in the somewhat analogous situation involving impermissible interference with interstate commerce,

[13] Although a pure effects test should be rejected, the effect of the government's action is relevant in determining whether its purpose was permissible. Here, the City's action benefited no party to the dispute. *See* pp. 23-24, *infra*.

the Court has expressly rejected the use of motive as a basis for resolving cases involving the legitimacy of a state's action. *See Dean Milk Co. v. City of Madison*, 340 U.S. 349, 354 (1951). The same logic applies in this case.

Moreover, it would be particularly inappropriate for the Court to hold that preemption in indirect effects cases turns on whether some local officials may have had a subjective intent to interfere with the labor dispute. The NLRB is surely correct that "it is important to separate the motives of individual Council members from the effect of the City's action." NLRB Br. 26 n.26. *See Personnel Administrator of Massachusetts v. Feeney*, 442 U.S. 256, 279 (1979). Because petitioner offers no compelling reason for deviating from the general rule against probing the minds of individual legislators, or in this case Council members, the Court should reject any preemption test that would permit subjective intent to be dispositive.

3. The NLRB's brief proposes a unique legal "test" for resolving this case. The Board correctly argues that Congress did not intend to preempt legitimate, neutral decisions of state and local governments that merely affect labor relations, and therefore the Board rejects a pure effects test. It proposes, instead, that if the local decision "incidentally burdens" one of the parties' economic weapons, it is "incumbent on the state or locality to demonstrate a *sufficiently close and urgent relationship* between the burden imposed and the achievement of a legitimate interest that Congress cannot be thought to have preempted the regulation." NLRB Br. 13 (emphasis added).

In apparent (and quite accurate) recognition that its "legal standard" offers inadequate guidance, the Board suggests that this case may not be "suitable for a detailed clarification of the law" and therefore proposes a remand for "a more thoroughgoing analysis by the courts below of the facts and the law as applied to those facts."

NLRB Br. 24. The Board's unusual legal standard does little to facilitate application of the law in this area, and further factual development below will not cure the manifest defects in the test. *Cf. Amalgamated Ass'n of Street, Electric Railway & Motor Coach Employees v. Lockridge*, 403 U.S. at 290 (clear legal tests are particularly necessary in the labor preemption area). The Board does not undertake to explain either how this test operates in general, or specifically what evidence the City would have to present on remand to demonstrate the "urgency" of the relationship between its decision not to renew petitioner's franchise and the transportation policy that decision was designed to serve.

But the fundamental flaw in the Board's analysis is that it assumes, without any reference to congressional intent, that state and local governments, in circumstances in which they are required to take action, must, because of the NLRA, supply the federal courts with extraordinary justification for the particular exercise of their police powers. The City Council had before it evidence that petitioner's service was not necessary to meet the City's needs and that denial of the franchise renewal would benefit the health of the taxicab industry.[14] The Board fails to explain why this evidence is insufficient.

Moreover, the NLRB's imposition of a stricter, though undefined, standard of judicial scrutiny on the police

[14] Even if is is true that the City obtained this information because of the nonoperation of petitioner's taxicabs, that nonoperation is attributable solely to petitioner and not to the City. Petitioner was authorized, under the original franchise, to operate its cabs from February 11, 1981, when the union went on strike, until March 31, 1981, when the franchise expired.

In fact, petitioner was authorized, pursuant to the preliminary injunction, to operate at least until the Ninth's Circuit's first decision on September 7, 1982. Petitioner notes that the City refrained from issuing a cease and desist order in the early stages of the lawsuit and did not issue such an order until April 29, 1983, only at that time prohibiting petitioner from operating its taxicabs. Pet. Br. 6 n.5.

power decisions of a municipality solely because they "touch" labor relations is clearly inconsistent with the holding in *Belknap, Inc. v. Hale, supra*, and *Metropolitan Life Insurance Co. v. Massachusetts, supra*. In those cases, this Court held that parties to collective bargaining disputes must conform to the requirements of state and local law; states and localities need not modify their customary actions and rules of decision because of a labor dispute. *See* pp. 14-15, *supra*.

The Board's argument is also fundamentally inconsistent with the ordinary respect afforded state and local prerogatives in any other preemption context. Typically, state and local actions are presumed valid and judged solely by standards of reasonableness, unless they clearly conflict with federal law or policy. As the Court has held, "[p]reemption of state law by federal statute or regulation is not favored 'in the absence of persuasive reasons—either that the nature of the regulated subject matter permits no other conclusion, or that the Congress has unmistakably so ordained.'" *Chicago & N.W. Transp. Co. v. Kalo Brick & Tile Co.*, 450 U.S. 311, 317 (1981), quoting *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142 (1963); *see also Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. 504, 522-523 (1981) (collecting cases). The Board's presumption against state and local actions is thus completely unjustified in indirect effects preemption cases.[15]

[15] The NLRB attacks the City's reliance upon transportation policy as impermissible under this Court's decision in *Amalgamated Ass'n of Street, Elec. Ry. & Motor Coach Employees v. Wisconsin Empl. Relations Bd.*, 340 U.S. 383 (1951). But, in that case, the state baldly intervened in the dispute, asserting that it had the authority to enjoin the union from striking to ensure the provision of transportation services within the state. The Court rejected that justification as inconsistent with Congress's expressed intent to "occup[y] th[e] field and clos[e] it to state regulation." *Id.* at 390. But Congress did not intend to preclude state and local governments from making public transportation decisions that may indirectly affect a party to a collective bargaining dispute.

In sum, the Board's test is difficult to understand and would be even more difficult to apply. Worst of all, it would bring a heightened judicial scrutiny test into an area of the law where constriction of local policymaking prerogatives is not necessary to accomplish the objectives of our national labor laws. Cases such as *New York Telephone* and this case do not involve the primary jurisdiction of the NLRB. Neither do they involve activity that is either prohibited or protected by the National Labor Relations Act. The governmental prerogatives at stake, therefore, lie at the core of state and local concern and at the outer edge of federal concern. To strike down the state action for failure to provide an extraordinary justification to a federal court constitutes "mere substitution of judicial judgments of the overall wisdom of local legislation" for that of the City Council, which the Board itself recognizes is wholly inappropriate.[16] NLRB Br. 10.

4. In contrast to the above alternative approaches, *amici*'s proposed test protects the legitimate prerogatives of state and local governments without sacrificing any legitimate federal interests. Under this approach, the public policy choices of state and local decisionmakers will typically be upheld, a result consistent with traditional preemption doctrine (*see* cases cited p. 21, *supra*), but the private litigant is permitted to show that national labor policy was in fact sacrificed without any real benefit to legitimate state or local public policy. In this way, state and local officials will be able to fulfill their duties and responsibilities without regard to the possible effect on a

[16] Because of the dilemma that cities and states face in "thrust upon" situations, *amici* believe that deference to local decisionmaking is particularly appropriate. Thus, on the record in this case, if the City Council had rejected the position that there was no need for petitioner's service and had renewed petitioner's franchise, the union might have challenged the decision on the ground that its collective bargaining position was impaired. In that case, too, *amici* would have supported the City Council's action.

labor dispute, so long as they do not attempt to interfere with that dispute.[17]

C. On the Facts Before the Court, the City's Decision was not Preempted by the National Labor Laws

Under *amici*'s proposed legal analysis, the basic issue in this case is whether the City's decision not to renew petitioner's franchise furthered a legitimate, neutral public policy unrelated to labor relations. It is not disputed that the City Council at its March 23, 1981, meeting focused on whether there was any continuing need for petitioner's service and whether the general economic health of the taxicab business might benefit from nonrenewal. Pet. App. 16a. There was uncontested evidence before the City Council that since petitioner's fleet had stopped operating, the City had been receiving an adequate "quality of service" and that the Department of Transportation had received no complaints about the inadequacy of service during the strike by petitioner's employees. *Ibid.* Because of the strike, the City Council was provided with an opportunity to analyze the City's needs without petitioner's fleet and the Council concluded that service would be just as good and that the industry itself would benefit economically by eliminating unneeded competition. As the court of appeals pointed out, there was no evidence that the City Council did not act in furtherance of transportation policy, which is unquestionably a legitimate public purpose.[18] Pet. App. 7a. Probably the

[17] *Amici's* test will be significantly easier for the lower courts to apply than the Board's nebulous standard. Courts routinely determine whether state and local governmental purposes meet constitutional standards. *See, e.g., Roberts v. United States Jaycees*, —— U.S. ——, ——, 104 S. Ct. 3244, 3225-55 (1984).

[18] Throughout the pivotal debate in the City Council, members consistently described their decision in terms of the public interest with respect to transportation policy. *See* J.A. 64 (remarks of Councilwoman Russell) ("We . . . need to keep in mind our responsibility . . . to do the best we can in terms of providing good public

strongest evidence that the City Council was pursuing a "neutral policy" in deciding whether to renew petitioner's franchise is the fact that no one involved in the labor dispute benefited from the decision. The company went out of business; the drivers were left without union jobs; and the union lost its status as a bargaining representative.[19] Accordingly, the City fully satisfied its burden to demonstrate that its franchising decision was based on a neutral governmental purpose.[20]

Petitioner did not present any substantial evidence that the City's purpose was to interfere with the labor dispute. Petitioner relies solely on three types of evidence

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transportation for our citizens."); J.A. 71 (remarks of Councilman Yaroslavsky) ("how is the public going to get the bes[t] level of service, and I think the public is being better served with [petitioner] off the streets."). Indeed, Councilwoman Russell, who had moved to extend petitioner's franchise for 30 days, summed up the debate as follows: "I really do appreciate the tenor of the comments of the council because they have not been in terms of choosing up sides, but in terms of what would be the best public service." J.A. 85.

[19]The NLRB argues that the effect on the union is not important because a union official testified before the City Council that he hoped the drivers would find work with other taxicab companies. NLRB Br. 23 n.23. But he did not testify that these would be union jobs, and, in any event, the union still lost its position as the bargaining agent for petitioner's employees. Thus, the City Council's transportation decision was no victory for the union.

[20] The recommendations of the City's Transportation Department and the City Council Committee in favor of franchise renewal cannot be considered evidence that there was a need for petitioner's service because neither recommendation even discussed the issue of need. Moreover, neither was made after petitioner's taxicabs stopped serving the City and therefore did not reflect the information available to the City Council on March 23, 1981. In any event, petitioner never presented any evidence challenging the Council's finding that petitioner's service was *no longer* necessary. In its brief, petitioner admits that the strike "caused no disruption in taxicab service in the community because other operators were able to absorb the overflow." Pet. Br. 4.

—statements by union leaders to petitioner regarding their intention to oppose renewal of petitioner's franchise, statements by union members to the City Council opposing petitioner's franchise (Pet. Br. 4-5 & n.3), and statements by two individual members of a Council composed of thirteen members indicating that they would vote to renew the franchise if petitioner settled its labor dispute. Pet. Br. 5 n.4.[21] But this evidence is insufficient to create a genuine issue of material fact under Fed. R. Civ. P. 56 about whether the City Council lacked any purpose to further transportation policy and instead acted to interfere in a labor dispute. Obviously, statements by the union officials are irrelevant in explaining the City Council's motives. The statements of two Council members are equally insufficient to prove the intent of the other ten Council members in the twelve-to-one majority.[22]

What is missing from petitioner's attempt to create an issue of material fact is evidence that the City really did need more taxicabs, for example, that the City Council authorized additional taxicab service. Similarly probative

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[21] Petitioner also cites the finding of the district court, in granting a preliminary injunction in 1981, that "[i]t is undisputed that the sole basis for refusing to extend [petitioner's] franchise was its labor dispute with its Teamster drivers." Pet. App. 29a. The court's statement certainly is no longer an accurate description of the record or of the arguments the City has made since 1981. When the case was decided on summary judgment, the district court found that it was undisputed that the discussion of the City Council concerning petitioner's franchise renewal involved, in significant measure, the health of the taxicab industry. Pet. App. 16a. It is these findings, disposing of this case on the merits, and not those of the court in issuing a preliminary injunction, that are controlling at this time. *University of Texas v. Camenisch*, 451 U.S. 390, 394-395 (1981); *Brown v. Chote*, 411 U.S. 452, 456 (1973).

[22] In fact, the record contains statements by several Council members that, no matter what they decided regarding petitioner's franchise, they would adversely affect one of the parties to the labor dispute, and that therefore they should remain neutral as between the parties and decide the issue on the basis of the City's needs. J.A. 65, 66, 71, 85.

would have been official statements on behalf of the City Council made directly to petitioner that it was obliged to settle the strike before approval could be granted, or evidence of other comparable pressure tactics, by local officials acting on the Council's behalf. But as Judge Norris pointed out in his concurring opinion, petitioner failed completely to present any objective evidence of a purpose on the part of the City to interfere with the collective bargaining process. Pet. App. 10a.

Because of the weakness of its factual showing, petitioner's argument rests almost exclusively on a single sentence in the court of appeals' opinion. At the very end of its legal analysis, the majority commented that the City "merely insisted upon resolution of the dispute as a condition to license renewal." Pet. App. 8a. This remark provides no basis for declaring the City's decision preempted. First, it was not a finding based on the record; the district court had made no finding of fact that the City "conditioned" franchise renewal on settlement of the collective bargaining dispute. Indeed, because the court of appeals majority held, as a matter of law, that the City could permissibly insist upon resolution of the dispute so long as it did not dictate the terms of the agreement (*see* n.5, *supra*), it had no reason to decide whether, in fact, the City had insisted upon resolution as a condition to franchise renewal. Second, the comment is inconsistent with the earlier statement in the court's opinion that there was no evidence impugning the City's purpose to carry out a transportation policy. Pet. App. 7a.[23] The lack of any evidence negating the existence of that legitimate purpose is reflected in the district court's grant of summary judgment for the City.

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[23] Even if the City also had the purpose of affecting the resolution of the parties' dispute, that does not contradict the City's decision to further the legitimate and neutral purpose of ensuring an economic and efficient taxicab service. Furtherance of that policy is, by itself, sufficient to uphold the City's action. *See* n.9, *supra*.

Unless the Court assumes that the City Council acted in bad faith in reaching its conclusion that petitioner's service was no longer needed, then it is clear that resolution of the labor dispute ultimately became irrelevant to the franchising decision. Instead, what became important was the fact, revealed by the nonoperation of petitioner's taxicabs, that the City could be better served and the taxicab industry as a whole would be healthier if petitioner's franchise were not renewed. Because the City Council acted in response to these legitimate public concerns, its decision did not conflict with any purpose of the National Labor Relations Act; and therefore its decision is not preempted under the Supremacy Clause.

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be affirmed.

Respectfully submitted,

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